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Monday
December 4, 1995

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 5 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

LONG BEACH, CA

WHEN: December 12, 1995 at 9:00 am
WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802
RESERVATIONS: 310–980–3447

SEATTLE, WA

[Two Sessions]
WHEN: December 13, 1995 at 9:00 am and 1:00 pm
WHERE: National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115
RESERVATIONS: 206–526–6507

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 60, No. 232
Monday, December 4, 1995

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1002

[DA–95–23A]

Milk in the New York-New Jersey Marketing Area; Removal of Certain Regulations Under the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document removes certain provisions in the regulations issued under the New York-New Jersey Federal milk marketing order (Order 2) from publication in the Code of Federal Regulations. Specifically, this action removes the Order 2 subparts that contain the market administrator's Classification and Accounting Rules and Regulations, and the Determination and Public Announcement of Freight Zones. The market administrator will continue to maintain these provisions as separate documents. This action is taken to reduce printing costs and to comply with the President's regulatory reform initiative.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

The Department is issuing this rule in conformance with Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule reduces the cost involved with publishing in the Code of Federal Regulations a publication that is already made publicly available. Furthermore, this action makes no changes to the operation of the order or the provision of the rules and regulations issued thereunder.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This rule is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the New York-New Jersey marketing area. It is hereby found and determined that the following provisions of the regulations issued under the order do not need to be published in the Code of Federal Regulations:

1. Subpart—Classification and Accounting Rules and Regulations (§§ 1002.100 through 1002.260).

2. Subpart—Determination and Public Announcement of Freight Zones (§§ 1002.500 and 1002.501).

Findings and Determinations

This action removes the aforementioned subparts issued by the market administrator of the New York-New Jersey order (Order 2) from publication in annual Code of Federal Regulations.

The market administrator will continue to promulgate and maintain classification and accounting rules and regulations and to determine and publicly announce freight zones pursuant to the provisions of the order and subject to the approval of the Secretary. The market administrator will also continue to publish these documents and make them available upon request from any interested party. Industry representatives may request a copy of these documents from the market administrator at any time.

The publication of the aforementioned subparts for Order 2 is furnished to the industry by the market administrator in the performance of his duties. The provisions of these subparts are issued and administered by the Order 2 market administrator as specified in § 1002.46 and § 1002.52 of the order. Thus, it is not necessary to replicate the administrator's efforts in this regard by publishing these subparts in the Code of Federal Regulations. Furthermore, this removal action is consistent with the President's regulatory reform initiative.

Pursuant to 5 U.S.C. 553, it is hereby found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because the removal of these subparts will not affect the operation or administration of the order or the provisions issued thereunder.

List of Subjects in 7 CFR Part 1002

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1002 is amended as follows:

PART 1002—MILK IN NEW YORK-NEW JERSEY MARKETING AREA

1. The authority citation for 7 CFR Part 1002 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1002.100–1002.260 [Removed]

2. In part 1002, Subpart—Classification and Accounting Rules and Regulations, §§ 1002.100 through 1002.260 and their undesignated centerheadings and the subpart heading are removed.

§ 1002.500–1002.501 [Removed]

3. In part 1002, Subpart—Determination and Public Announcement of Freight Zones, §§ 1002.500 through 1002.501, and their subpart heading are removed.

Dated: November 27, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–29460 Filed 12–1–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1002

[DA–95–23B]

Milk in the New York-New Jersey Marketing Area; Interim Rule: Termination of Certain Order Provisions and Removal of Certain Regulations of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim Rule terminating certain provisions with request for comments.

SUMMARY: This document removes certain provisions of the New York-New Jersey Federal milk marketing order (Order 2) and removes two subparts of provisions issued thereunder from publication in the Code of Federal Regulations. Specifically, this document terminates the requirement that certain changes to the market administrator's rules and regulations be published in the Federal Register. Additionally, this document removes the publication of two Order 2 subparts containing the market administrator's rules and regulations—Conduct of Hearings Relating to Suspended Cooperative Payments, and Cooperative Payment Rules and Regulations Approval of Tentative Amendment—from the annual Code of Federal Regulations. Nevertheless, the provisions of the subparts will continue to apply to the administration of the order and will be maintained by the market administrator as separate documents. This action is taken to reduce printing costs and to comply with the President's regulatory reform initiative.

DATES: Effective: December 4, 1995. Comments are due on or before January 3, 1996.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202)690–1366.

SUPPLEMENTARY INFORMATION: This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that these actions would not have a significant economic impact on a substantial number of small entities. These actions would reduce the cost involved with publishing in the Code of Federal Regulations regulations that are available to the industry from the market administrator. Furthermore, except for order provisions concerning publication in the Federal Register, this action makes no changes in the operation of the order or the provisions of the rules and regulations issued thereunder.

The Department is issuing these interim rules in conformance with Executive Order 12866.

These interim rules have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. These interim rules will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rules.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the provisions of the Agricultural Marketing Agreement Act, the following provisions of the order regulating the handling of milk in the New York-New Jersey marketing area are terminated by this interim rule:

1. In § 1002.77(I)(1), the following words: ''published in the Federal Register and''.

2. In § 1002.77(I)(3), the following words: ''approval, and shall be published in the Federal Register following such''.

In addition, the following provisions of the rules and regulations issued under the order do not need to be published in the Code of Federal Regulations:

3. Subpart—Conduct of Hearings Relating to Suspended Cooperative Payments (§§ 1002.300 through 1002.353).

4. Subpart—Cooperative Payment Rules and Regulations Approval of Tentative Amendment (§§ 1002.400 through 1002.444).

All persons who want to send written data, views, or arguments about these interim actions should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 30th day after the publication of this document in the Federal Register.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CAR 1.27(b)).

Statement of Consideration

This interim rule terminates the requirement which provides that certain rules and regulations issued by the market administrator of the New York-New Jersey order (Order 2) be published in the Federal Register after they have been approved by the Secretary. Additionally, two Order 2 subparts, which contain the market administrator's rules and regulations involving the conduct of hearings related to suspended cooperative payments and cooperative payment rules and regulations, would no longer be published in the annual Code of Federal Regulations.

The market administrator will continue to issue any specific rules and

regulations that are needed to effectuate the provisions of the order regulating the handling of milk in the Order 2 marketing area. These rules and regulations are, and will continue to be, issued to facilitate the administration of the order and are updated as necessary, published, and made available to interested parties. Industry representatives may request a copy of the rules and regulations from the market administrator at any time.

This action will not change the rules and regulations previously issued by the Order 2 market administrator and now in effect to carry out the regulatory provisions of the order. Order 2 establishes specific procedures that must be followed by the market administrator in revising the rules and regulations. It also sets forth methods whereby interested parties are informed about proposals to change the rules and regulations and how they may participate in the promulgation process.

The printing and procedural functions involving the implementation of rules and regulations for Order 2 are accomplished by the market administrator in the performance of his duties. These matters are being adequately performed by the Order 2 market administrator. Thus, it should not be necessary to replicate the market administrator's efforts by requiring that certain portions of the rules and regulations, all of which must be approved by the Secretary, be published in the Federal Register or that the Order 2 subparts containing the rules and regulations be published in the Code of Federal Regulations each year. Furthermore, this action is consistent with the President's regulatory reform initiative.

Accordingly, with regard to the termination of the provisions of the order as hereinafter set forth, it is found in accordance with the Act that these provisions no longer tend to effectuate the declared policy of the Act. Pursuant to 5 U.S.C. 553, it is hereby found and determined, upon good cause, That it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule in effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because, except for order provisions concerning publication in the Federal Register, this action will not affect the operation or administration of the order or the provisions issued thereunder.

Written comments are invited from interested parties concerning this action.

List of Subjects in 7 CFR Part 1002

Milk marketing orders.

Order

For the reasons set forth in the preamble, 7 CFR part 1002 is amended as follows:

PART 1002—MILK IN NEW YORK-NEW JERSEY MARKETING AREA

1. The authority citation for 7 CFR part 1002 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1002.77 [Amended]

2. In § 1002.77, paragraph (i)(1), the words ''published in the Federal Register and'' are removed.

3. In § 1002.77, paragraph (i)(3), the words ''approval, and shall be published in the Federal Register following such'' are removed.

§§ 1002.300–1002.353 [Removed]

4. In part 1002, Subpart—Conduct of Hearings Relating to Suspended Cooperative Payments (§§ 1002.300 through 1002.353) is removed.

§§ 1002.400–1002–444 [Removed]

5. Subpart—Cooperative Payment Rules and Regulations Approval of Tentative Amendment, §§ 1002.400 through 1002.444 and their undesignated centerheadings and the subpart heading are removed.

Dated: November 27, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–29461 Filed 12–1–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1260

[No. LS–95–007]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the Board was reapportioned in 1993. These adjustments are required by the Beef Promotion and Research Order (Order) and would result in an increase in Board membership from 107 to 111, effective with the Secretary's 1996 appointments.

EFFECTIVE DATE: January 3, 1996.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2606–S, P.O. Box 96456, Washington, DC 20090–6456. 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of AMS has determined that this final rule will not have a significant impact on a substantial number of small entities as defined by RFA since it only adjusts representation on the Board to reflect changes in domestic cattle inventory and imports.

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder (7 CFR 1260.101 *et seq.*). Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer and importer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion

units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional 1 million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993.

The current Board representation by States or units has been based on an average of the January 1, 1990, 1991, and 1992 inventory of cattle in the various States as reported by the National Agricultural Statistics Service of the Department of Agriculture (USDA). Importer representation has been based on a combined total average of the 1989, 1990, and 1991 live cattle imports as published by the Foreign Agricultural Service (FAS) of USDA and the average of the 1989, 1990, and 1991 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its July 24, 1995, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1992, to January 1, 1995. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1993, 1994, and 1995 USDA cattle inventory numbers would best reflect the number of cattle in each State or unit since the 1993 reapportionment.

The Board reviewed the March 1995 FAS circular, ''U.S. Trade and Prospects, Dairy, Livestock, and Poultry,'' to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1992, 1993, and 1994 cattle import data and the average of the 1992, 1993, and 1994 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its July 24, 1995, meeting to be consistent with the procedures used for domestic representation.

On September 8, 1995, AMS published in the Federal Register (60 FR 46781) for public comment a proposed rule providing for the adjustment in Board membership.

The Department did not receive any comments concerning the proposed rule. Thus, the reapportionment of the Board in this final rule is unchanged from the proposed rule. This final rule increases the number of representatives on the Board from 107 to 111. Two States—Iowa and Ohio—lose one member each; three States—Missouri, Montana, and South Dakota—gain one member each; Texas gains two members; and the importer unit gains one member. Nevada loses its only member. Nevada will be merged with Oregon, a contiguous State that has only one member, to form a Western unit. The combined cattle inventory of Nevada and Oregon will entitle the Western unit to two seats on the Board, thus enabling both States to be jointly represented. The States and units affected by the reapportionment plan and the current and revised member representation per unit are as follows:

States	Current representation	Revised representation
1. Iowa	5	4
2. Missouri	4	5
3. Montana	2	3
4. Ohio	2	1
5. South Dakota	3	4
6. Texas	13	15
7. Western	0	2
Nevada	1	.....
Oregon	1	.....

New Board representation for the entire 40 units is shown in the revised § 1260.141(a) contained herein. The new Board reapportionment will become effective with 1996 nominations and appointments.

This action makes final the provisions of the proposed rule published at 60 FR 46781 on September 8, 1995.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. In section 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) For Board nominations and appointments beginning with those in 1996, the United States shall be divided into 39 geographical units and 1 unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,677	2
2. Arizona	863	1
3. Arkansas	1,837	2
4. California	4,617	5
5. Colorado	2,967	3
6. Florida	1,977	2
7. Georgia	1,477	1
8. Idaho	1,720	2
9. Illinois	1,813	2
10. Indiana	1,163	1
11. Iowa	4,183	4
12. Kansas	6,067	6
13. Kentucky	2,617	3
14. Louisiana	943	1
15. Michigan	1,210	1
16. Minnesota	2,750	3
17. Mississippi	1,353	1
18. Missouri	4,600	5
19. Montana	2,583	3
20. Nebraska	6,017	6
21. New Mexico	1,437	1
22. New York	1,503	2
23. North Carolina	1,063	1
24. North Dakota	1,857	2
25. Ohio	1,480	1
26. Oklahoma	5,333	5
27. Pennsylvania	1,783	2
28. South Carolina	513	1
29. South Dakota	3,833	4

CATTLE AND CALVES [1]—Continued

State/unit	(1,000 head)	Directors
30. Tennessee	2,450	2
31. Texas	[1] 4,667	15
32. Utah	867	1
33. Virginia	1,713	2
34. Wisconsin	3,883	4
35. Wyoming	1,383	1
36. Northwest		2
Alaska	9	
Hawaii	173	
Washington	1,353	
Total	1,535	
37. Northeast		1
Connecticut	76	
Delaware	30	
Maine	116	
Massachusetts	69	
New Hampshire	49	
New Jersey	67	
Rhode Island	7	
Vermont	292	
Total	706	
38. Mid-Atlantic		1
District of Columbia	0	
Maryland	310	
West Virginia	477	
Total	787	
39. Western		2
Nevada	497	
Oregon	1,420	
Total	1,917	
40. Importer [2]	7,016	7

[1] 1993, 1994, and 1995 average.
[2] 1992, 1993, and 1994 average.

* * * * *

Dated: November 27, 1995.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 95–29459 Filed 12–1–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1654–94]

RIN 1115–AD66

Temporary Alien Workers Seeking H Classification for the Purpose of Obtaining Graduate Medical Education or Training

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: After consideration of comments filed and the relevant issues, the Immigration and Naturalization Service (Service) has decided not to implement one of the changes previously proposed, to preclude the use of the H–1B non-immigrant classification for graduates of foreign medical schools pursuing medical residencies in the United States. However, this rule amends the Service's regulations in other respects by modifying the filing procedures for certain H nonimmigrant petitions involving multiple beneficiaries. The rule allows a petitioner to file a single petition even when the beneficiaries listed on the petition will be applying for nonimmigrant visas at different consulates or for entry into the United States at different Ports-of-Entry, provided that the aliens will be performing the same service or receiving the same training, for the same period of time, and in the same location. This rule further amends the Service's regulations by clearly differentiating between an H–3 alien trainee and an H–3 special education trainee with respect to the time limitations on admission for these types of classifications. This rule will ease the burden on the public when filing H petitions involving multiple beneficiaries and will correct a regulatory inconsistency regarding the limitations on stay for H–3 nonimmigrant aliens.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: On July 14, 1994, at 59 FR 35866–35867, the Immigration and Naturalization Service (Service) published a proposed rule in the Federal Register addressing three issues within the H nonimmigrant classification. The principal proposal related to the treatment of certain foreign medical graduates seeking to be classified under the H–1B nonimmigrant classification as amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA). The Service proposed that graduates of foreign medical schools should be prohibited from seeking H–1B classification for the purpose of pursuing a medical residency in the United States and that, instead, these aliens should be required to avail themselves of the J–1 nonimmigrant classification. The Service also proposed that those aliens already admitted to the United States as H–1B nonimmigrant aliens for the purpose of pursuing a medical residency be required to seek a change of nonimmigrant status to that of a J–1 nonimmigrant alien to complete the residency. After reviewing the comments received from the public, the Service has decided not to promulgate this portion of the proposed rule.

The comment period for the proposed rule ended on September 12, 1994. In response to the proposed rule, the Service received a total of 325 comments. The following is a discussion of the comments and the Service's response.

Multiple Beneficiaries and Time Limitations on Certain H–3 Trainees

Of the 325 comments received, only one addressed the Service's proposal relating to multiple beneficiaries on H petitions and its proposal regarding time limitations for H–3 alien trainees. The commenter opined that these two proposals comported with Congressional intent and recommended that they be adopted. The Service concurs and accordingly will incorporate those two proposals in the final rule.

Medical Residencies Under the H–1B Nonimmigrant Classification

The Service received 325 comments addressing the issue of medical residencies under the H–1B nonimmigrant classification. Only 11 commenters agreed with the Service's proposal that graduates of foreign medical schools be prohibited from using the H–1B nonimmigrant classification for the purpose of pursuing a medical residency. The remainder of the commenters expressed the opinion that Congress intended that graduates of foreign medical schools be permitted to pursue medical residencies under the H–1B nonimmigrant classification. In addition, 235 of the commenters stated that it was not fair or appropriate for the Service to require that an alien already admitted into the United States as an H–1B nonimmigrant alien in order to pursue a medical residency be required to change his or her nonimmigrant status to a J–1 nonimmigrant alien in order to complete the residency.

In proposing this rule, the Service expressed its opinion that Congress did not intend the H–1B nonimmigrant classification to be used by graduates of foreign medical schools coming to the United States to pursue medical residencies or otherwise receive graduate medical education or training, and that, therefore, these aliens should

seek classification as J–1 nonimmigrant aliens. This opinion was based on the Service's examination of the relevant legislation, including the Health Professionals Education Assistance Act of 1976 (HPEAA), Pub. L. 94–484 and MTINA. The Service took note that the HPEAA established the J–1 classification as the sole vehicle, with certain limited exceptions, for graduates of medical schools to obtain graduate medical education or training in the United States, including medical residencies. *See* sections 101(a)(15)(J) and 212(j)(1) of the Act; *see also* pre-IMMACT (Immigration and Nationality Act of 1990) section 101(a)(15)(H)(i) of the Act. The Service further noted that, by amending sections 101(a)(15)(H)(i)(b) and 212(j)(2) of the Act, MTINA provided an avenue for foreign medical graduates to enter the United States in H–1B status to perform services in the medical professions. The Service opined, however, that MTINA did not alter the HPEAA's requirement, as set forth in section 212(j)(1) of the Act, that a graduate of a foreign medical school seeking education or training do so only as a J–1 nonimmigrant alien. In support of this position, the Service expressed its belief that Congress would not have placed in juxtaposition two such clearly different statutory provisions as section 212(j)(1) and section 212(j)(2) of the Act had it intended for the H–1B and J–1 classifications to overlap with respect to foreign medical graduates seeking graduate medical education or training.

After a careful review of the comments received in response to the proposed rule and a further review of the relevant legislative history, the Service has opted to withdraw this portion of the proposed rule. The Service is now of the opinion that the statute can be reasonably interpreted either to provide that as proposed by the Service, the H–1B classification is not available for graduates of foreign medical schools to take medical residencies or, as is the current practice, the H–1B classification is available for graduates of foreign medical schools for medical residencies.

The Service has elected to adopt the second interpretation and continue its current practice of allowing graduates of foreign medical schools to take residencies under the H–1B classification. In so doing, the Service notes first that nothing in the statute or the relevant legislative history specifically precludes H–1B classification for aliens seeking graduate medical training, and second, under the language of section 214(i) of the Act, a graduate medical education program, such as a residency, could in some cases meet the definition of ''specialty occupation'' for H–1B purposes. *See also* 8 CFR 214.2(h)(4)(i). In addition, we note, as did some commenters, that a medical residency can reasonably be considered to be either a training program or a specialty occupation. This position is consistent with that taken by the Service in *Matter of Bronx Municipal Hospital Center,* 12 I&N Dec. 768 (1968), where the Regional Commissioner held that a medical residency is primarily clinical in nature and, therefore, does not qualify as an H–3 training program.

In deciding to withdraw this portion of the rule, the Service also found persuasive the comments submitted by a number of large urban medical facilities indicating that they would be unable to recruit qualified individuals to pursue residencies under the J–1 program. These commenters indicated that they have relied heavily on the use of the H–1B program to staff their residency programs and that the requirement that these aliens use the J–1 program would result in a curtailment of medical services which could otherwise be provided to the surrounding community.

Finally, the Service was also impressed by the sheer number of comments received in opposition to the rule. While three major organizations involved in the medical health field supported the Service's proposed rule, over 300 other commenters expressed the opinion that graduates of foreign medical schools should be permitted to pursue medical residencies as H–1B nonimmigrant aliens. The three commenters based their opinion on the belief that medical residencies should be characterized as training programs as opposed to temporary employment as a specialty occupation. However, as indicated above, the Service is of the opinion that a medical residency can be considered either a training program or a specialty occupation. *See Bronx Municipal Hospital Center, supra.*

As a result of the Service's withdrawal of this portion of the proposed rule, graduates of foreign medical schools will continue to be permitted to pursue a medical residency under the H–1B classification provided, of course, that all regulatory and statutory requirements for the classification are met. In addition, graduates of foreign medical schools will also continue to be eligible to pursue medical residencies under the J–1 nonimmigrant classification.

Prospective petitioners for H–1B nonimmigrant aliens seeking to pursue medical residencies should be aware of the obligations which are assumed when an H–1B petition is filed. These obligations include both the requirement that the prospective employer pay the alien's return transportation if the alien is dismissed before the expiration of the validity of the petition and compliance with section 212(n) of the Act.

This rule will have no adverse effect on family well-being.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This regulation merely modifies certain filing procedures for H petitions.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraph (h)(2)(ii); and by

b. Revising paragraph (h)(13)(iv), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(ii) *Multiple beneficiaries.* More than one beneficiary may be included in an H–2A, H–2B, or H–3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time, and in the same location.

* * * * *

(13) * * *

(iv) *H–2B and H–3 limitation on admission.* An H–2B alien who has spent 3 years in the United States under section 101(a)(15)(H) and/or (L) of the Act; an H–3 alien participant in a special education program who has spent 18 months in the United States under section 101(a)(15)(H) and/or (L) of the Act; and an H–3 alien trainee who has spent 24 months in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior 6 months.

* * * * *

Dated: November 1, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–29417 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–10–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Regulation of Products Subject to Other Acts Under the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; revocation of rules.

SUMMARY: The Commission revokes seven rules transferring regulation of risks of injury from the Federal Hazardous Substances Act to the Consumer Product Safety Act. The Commission is revoking these rules because they are no longer needed.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, extension 2216.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) established the Consumer Product Safety Commission (the Commission) to protect the public from unreasonable risks of injury associated with consumer products. Section 3(a)(1) of the CPSA (15 U.S.C. 2052(a)(1)) defines the term ''consumer product'' to mean an article which is produced or distributed for sale to, or use by, consumers.

Section 30(a) of the CPSA (15 U.S.C. 2079(a)) transferred to the Commission the authority formerly exercised by the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*). Section 30(d) of the CPSA requires the Commission to regulate under the FHSA any risk of injury associated with a ''consumer product'' which can be eliminated or reduced to a sufficient extent by action under the FHSA, unless the Commission issues a rule to transfer regulation of that risk of injury to the CPSA.

B. Regulation of Toys and Children's Articles

Toys and other articles intended for use by children are ''consumer products,'' as that term is defined by section 3(a)(1) of the CPSA, because they are articles which are produced for sale to consumers. Sections 2(f) and 3 (e) of the FHSA (15 U.S.C. 1261(f), 1262(e)) authorize the Commission to issue rules to ban any ''toy or other article intended for use by children'' which presents a ''mechanical hazard.'' The procedural steps required to issue a banning rule are set forth in sections 3(e) through (i) of the FHSA (15 U.S.C. 1262(e)–(i)).

C. Corrective Action Under the FHSA

Before 1984, the Commission's authority to order corrective action for toys and children's articles under section 15 of the FHSA (15 U.S.C. 1264) was limited to those items which violated an applicable banning rule.

Between 1981 and 1984, the Commission received reports of deaths and injuries associated with several types of toys and children's articles. These products included:

- Stuffed toys suspended from cords or strings which presented a risk of strangulation death or injury.
- Squeeze toys which presented a risk of suffocation death or injury.
- Mesh-sided playpens and mesh-sided portable cribs which presented a risk of asphyxia to children from airway blockage or chest compression.
- Expandable enclosures made from criss-crossed slats which presented a strangulation hazard to children.
- Baby cribs with hardware failures or omissions which presented risks of death or injury to children.
- Baby bassinets with legs that collapsed and presented risks of death or injury to infants.

All of these products were ''toys or other articles intended for use by children'' which presented a ''mechanical hazard.'' However, none of these products was subject to a banning rule issued under provisions of the FHSA. The Commission estimated that issuance of a banning rule would take about two years for each product.

D. Corrective Action Under the CPSA

Then as now, provisions of section 15 of the CPSA (15 U.S.C. 2064) authorized the Commission to issue a corrective action order for any consumer product which contains a defect which creates a ''substantial risk of injury to the public'' whether or not the product is in violation of a consumer product safety rule or other regulation.

E. Issuance of Transfer Rules

After considering the risks of injury to children presented by the products described above and the provisions of the FHSA and the CPSA, the Commission decided to transfer regulation of those risks from the FHSA to the CPSA. Although the risks of injury might ultimately be eliminated or reduced to a sufficient extent by action under the FHSA, issuance of rules to ban the products under consideration would be required before the Commission could issue a corrective action under the FHSA. The Commission concluded that transfer of regulation of the risks of injury from the FHSA to the CPSA was necessary because corrective action, if appropriate, could be accomplished more efficiently and expeditiously under the CPSA than under the FHSA.

From 1982 through 1984, the Commission issued seven rules under provisions of section 30(d) of the CPSA to transfer regulation of risks of injury associated with toys and children's articles from the FHSA to the CPSA. Those rules are codified in title 16 of the Code of Federal Regulations as:

§ 1145.9 Certain stuffed toys; risk of strangulation injury (issued March 31, 1982, 47 FR 13516).

§ 1145.10 Certain squeeze toys; risk of strangulation injury and/or suffocation injury from lodging in the throat (issued March 15, 1984, 49 FR 9722).

§ 1145.11 Certain play yards (playpens) with mesh sides; risk of asphyxia from airway blockage or chest compression (issued July 27, 1983, 48 FR 34023).

§ 1145.12 Certain portable cribs with mesh sides; risk of asphyxia from airway blockage or chest compression (issued July 27, 1983, 48 FR 34023).

§ 1145.13 Certain expandable children's enclosures; risk of strangulation (issued March 5, 1984).

§ 1145.14 Baby cribs with certain hardware failures or omissions; risks of death or injury (issued April 10, 1984, 49 FR 14101).

§ 1145.15 Baby bassinets having legs that collapse; risks of death or injury (issued July 27, 1984, 49 FR 30171).

Thereafter, the Commission obtained voluntary corrective action plans from manufacturers of the products which were the subjects of the transfer rules.

F. Amendment of the FHSA

On October 17, 1984, the Toy Safety Act of 1984 (Pub. L. 98–491, 98 Stat. 2269) became law. This legislation is codified as section 15(c) of the FHSA (15 U.S.C. 1274(c)). It authorizes the Commission to order corrective action with regard to any toy or children's article which is not in violation of a banning rule but which nevertheless presents a ''substantial risk of injury to children.'' With the addition of section 15(c) to the FHSA, the provisions of the FHSA and the CPSA authorizing the Commission to order corrective action are now substantially similar.

G. Revocation of Transfer Rules

Manufacturers of the products subject to the transfer rules described above have taken all actions required by the corrective action plans accepted by the Commission. If, in the future, the Commission learns of similar risks of injury presented by such toys and children's articles, section 15(c) of the FHSA authorizes the Commission to issue an order for corrective action without first issuing a banning rule. Consequently, the Commission is revoking the transfer regulations codified at 16 CFR 1145.9 through 1145.14 because they are no longer needed.

Generally, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires agencies to publish a notice of proposed rulemaking before issuing or revoking a regulation. However, the APA provides at 5 U.S.C. 553(b)(A) that requirements for a notice of proposed rulemaking are not applicable to rules of agency procedure or practice. Because the rules being revoked are procedural rules, notice of proposed rulemaking is not required.

The APA also requires at 5 U.S.C. 553(d) that a substantive rule must be published at least 30 days before its effective date. However, the rules being revoked are procedural rules which do not have any substantive effect. Because the rules at issue meet these criteria, this revocation shall become effective immediately.

H. Conclusion

Therefore, under the authority of section 553 of the Administrative Procedure Act and section 30(d) of the Consumer Product Safety Act, the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter B, Part 1145 to read as follows:

PART 1145—AMENDED

1. The authority for Part 1145 continues to read as follows:

Authority: Sec. 30(d), Pub. L. 92–573, 86 Stat. 1231 as amended 90 Stat. 510; 15 U.S.C. 2079(d).

§§ 1145.9 through 1145.15 [Removed and reserved]

2. Sections 1145.9, 1145.10, 1145.11, 1145.12, 1145.13, 1145.14, and 1145.15 are removed and reserved.

Dated: November 28, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–29375 Filed 12–1–95; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8618]

RIN 1545–AM15

Definition of a Controlled Foreign Corporation, Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8618) which were published in the Federal Register, Thursday, September 7, 1995 (60 FR 46500), governing the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Valerie Mark, (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections amend the Income Tax Regulations (26 CFR Part 1) under sections 954(b), 954(c) and 957(a) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8618) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8618), which was the subject of FR Doc. 95–21838, is corrected as follows:

1. On page 46501, column 3, in the preamble under the paragraph heading ''*Section 1.954–1: Foreign Base Company Income*'', paragraph 1 in the column, the sixth line from the bottom of the paragraph, the language ''904(f)(5). Commentators stated that'' is corrected to read ''904(f)(5). Commenters stated that''.

2. On page 46503, column 2, in the preamble under the paragraph heading ''*Section 1.954–2: Foreign Personal Holding Company Income*'', the first full paragraph in the column, line 6, the language ''transactions entered on or after March 7,'' is corrected to read ''transactions entered into on or after March 7,''.

3. On page 46505, column 2, in the preamble under the paragraph heading ''*Section 1.954–2: Foreign Personal Holding Company Income*'', the second full paragraph in the column, line 3, the language ''1.952–2(e)(3)(iv) excludes from foreign'' is corrected to read ''1.954–2(e)(3)(iv) excludes from foreign''.

§ 1.954–0 [Corrected]

4. On page 46509, middle of column 1, § 1.954–0 (b), the entry for § 1.954–2(b)(3), ''(3) Treatment of tax-exempt interest. [RESERVED.]'' is corrected to read ''(3) Treatment of tax-exempt interest. [RESERVED]''.

§ 1.954–1 [Corrected]

5. On page 46513, column 2, § 1.954–1(d)(7)(i), paragraph (ii) of Example 1, line 7, the language ''subpart F under the rules of this paragraph'' is corrected

to read ''subpart F income under the rules of this paragraph''.

6. On page 46513, column 2, § 1.954–1(d)(7)(i), paragraph (ii) of Example 1, line 18, the language ''year is 34 percent. Accordingly, the net item'' is corrected to read ''year is 35 percent. Accordingly, the net item''.

7. On page 46513, column 2, § 1.954–1(d)(7)(i), paragraph (ii) of Example 1, the third and fourth lines from the bottom of the paragraph, the language ''that is greater that 30.6 percent (90 percent of 34 percent). However, for purposes of'' is corrected to read ''that is greater than 31.5 percent (90 percent of 35 percent). However, for purposes of''.

8. On page 46513, column 2, § 1.954–1(d)(7)(i), paragraph (ii) of Example 2, line 2, the language ''greater than 30.6 percent. The net item of'' is corrected to read ''greater than 31.5 percent. The net item of''.

9–11. On page 46513, column 3, § 1.954–1 (d)(7)(i), paragraph (ii) of Example 3, line 3, the language ''greater than 30.6 percent, but Item 2 is not.'' is corrected to read ''greater than 31.5 percent, but Item 2 is not.''.

12–13. On page 46513, column 3, § 1.954–1 (d)(7)(i), Example 4, line 7, the language ''effective rate greater than 30.6 percent. The'' is corrected to read ''effective rate greater than 31.5 percent. The''.

14. On page 46514, column 2, § 1.954–1 (d)(7)(ii), paragraph (iv) of Example 1, the last two lines of the paragraph, the language ''States rate of taxation under section 11 is 34 percent.'' is corrected to read ''States rate of taxation under section 11 is 35 percent.''.

15. On page 46514, column 3, § 1.954–1 (d)(7)(ii), paragraph (v) of Example 1, the fourteenth line from the bottom of the column, the language ''tax rate ..... 30.6%'' is corrected to read ''tax rate ..... 31.5%''.

16. On page 46515, column 1, § 1.954–1 (d)(7)(ii), paragraph (v) of Example 1, in item ''(29)'', the last line, the language

''line (27) over line (26) ..... 100'' is corrected to read

''line (27) over line (26)) ..... 100''.

17. On page 46515, column 2, § 1.954–1 (d)(7)(ii), paragraph (iv) of Example 2, the last line, the language ''of taxation under section 11 is 34 percent'' is corrected to read ''of taxation under section 11 is 35 percent''.

18. On page 46515, column 3, § 1.954–1 (d)(7)(ii), paragraph (v) of Example 2, in item ''(15)'', the last line, the language ''tax rate ..... 30.6%'' is corrected to read

''tax rate ..... 31.5%''.

19. On page 46517, column 1, § 1.954–1 (f)(2)(iv), line 4, the language ''the principles of section 958(a) shall be'' is corrected to read ''the principles of section 958 shall be''.

§ 1.954–2 [Corrected]

20. On page 46521, column 3, § 1.954–2 (b)(4)(x), is corrected to read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(b) * * *

(4) * * *

(x) *Treatment of certain stock interests.* Stock in a controlled foreign corporation (lower-tier corporation) that is incorporated in the same country as the payor and that is more than 50-percent owned, directly or indirectly, by the payor within the meaning of section 958(a) shall be considered located in the payor's country of incorporation and, solely for purposes of section 954(c)(3), used in a trade or business of the payor in proportion to the value of the assets of the lower-tier corporation that are used in a trade or business in the country of incorporation. The location of assets used in a trade or business of the lower-tier corporation shall be determined under the rules of this paragraph (b)(4).

* * * * *

21. On page 46523, column 2, § 1.954–2 (d)(1)(i), line 6, the language ''creation, or production of, or in the'' is corrected to read ''creation or production of, or in the''.

22. On page 46523, column 3, § 1.954–2 (d)(3), Example 1, line 4, the language ''country X. At the research facility employees'' is corrected to read ''country X. At the research facility, employees''.

23. On page 46523, column 3, § 1.954–2 (d)(3), Example 1, line 18, the language ''creation, or production of, or in the'' is corrected to read ''creation or production of, or in the''.

24. On page 46524, column 3, § 1.954–2 (e)(2)(ii) introductory text, line 2, the language ''the sale, exchange, or retirement of a'' is corrected to read ''the sale, exchange or retirement of a''.

25. On page 46525, column 2, § 1.954–2 (f)(2)(iii)(A), line 6, the language ''merchant, or handler of commodities if'' is corrected to read ''merchant or handler of commodities if''.

26. On page 46525, column 2, § 1.954–2 (f)(2)(iii)(B) introductory text, line 5, the language ''producer, processor, merchant, or'' is corrected to read ''producer, processor, merchant or''.

27. On page 46525, column 3, § 1.954–2 (f)(2)(iii)(C), line 4, the language ''processor, merchant, or handler of'' is corrected to read ''processor, merchant or handler of''.

28. On page 46525, column 3, § 1.954–2 (f)(2)(iii)(E), line 4, the language ''producer, processor, merchant, or'' is corrected to read ''producer, processor, merchant or''.

29. On page 46526, column 1, § 1.954–2 (g)(2)(ii)(A), line 1, the language ''*General Rule.* Foreign currency gain or'' is corrected to read ''*General rule.* Foreign currency gain or''.

30. On page 46527, column 2, § 1.954–2 (g)(3)(iv), paragraph (ii) of the Example, third line from the bottom of the paragraph, the language ''transactions generate a net foreign currency'' is corrected to read ''transactions generate a net foreign base company sales''.

31. On page 46528, column 1, § 1.954–2 (h)(2)(i)(A), line 3, the language ''payments, cash flows, or return'' is corrected to read ''payments, cash flows or return''.

32. On page 46528, column 1, § 1.954–2 (h)(2)(i)(G), lines 2 and 3, the language ''provide financing, whether or not such financing actually is provided;'' is corrected to read ''provide financing, if any portion of such financing is actually provided;''.

33. On page 46528, column 3, § 1.954–2 (h)(4)(iv), Example 1, line 10, the language ''receivable is acquired by *FS*). *FS* purchases'' is corrected to read ''receivables are acquired by *FS*). *FS* purchases''.

34. On page 46528, column 3, § 1.954–2 (h)(4)(iv), Example 1, line 13, the language ''obligor under the receivable on Day 40.'' is corrected to read ''obligor under the receivables on Day 40.''.

35. On page 46528, column 3, § 1.954–2 (h)(4)(iv), Example 2, lines 4 through 9, the language ''under the factored receivable on Day 40, *FS* sells the receivable to controlled foreign corporation *Y* on Day 15 for $97. Both the income derived by *FS* on the factored receivable and the income derived by *Y* (other than stated interest) on the receivable'' is corrected to read ''under the factored receivables on Day 40, *FS* sells the receivables to controlled foreign corporation *Y* on Day 15 for $97. Both the income derived by *FS* on the factored receivables and the income derived by *Y* (other than stated interest) on the receivables''.

36. On page 46529, column 1, § 1.954–2 (h)(4)(iv), Example 5, line 3, the language ''receivable to *Y* for $99 on day 45, at which'' is corrected to read ''receivables to *Y* for $99 on Day 45, at which''.

37. On page 46529, column 1, § 1.954–2 (h)(4)(iv), Example 5, lines 7 through 10, the language ''receivable at a rate equal to at least 120 percent of the applicable Federal short-term rate, income derived by *Y* from the factored receivable is excluded from factoring income'' is corrected to read ''receivables at a rate equal to at least 120 percent of the applicable Federal short-term rate, income derived by *Y* from the factored receivables is excluded from factoring income''.

38. On page 46529, column 1, § 1.954–2 (h)(4)(iv), Example 6, line 4, the language ''controlled foreign corporation. On Day 1'' is corrected to read ''controlled foreign corporation. On Day 1,''.

39. On page 46529, column 2, § 1.954–2 (h)(6), Example 1, is corrected to read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(h) * * *

(6) * * *

Example 1. *CFC*, a controlled foreign corporation, promises that Corporation *A* may borrow up to $500 in principal for one year beginning at any time during the next three months at an interest rate of 10 percent. In exchange, Corporation *A* pays *CFC* a commitment fee of $2. Pursuant to this agreement, *CFC* lends $80 to Corporation *A*. As a result, the entire $2 fee is included in the computation of *CFC*'s foreign personal holding company income under paragraph (h)(2)(i)(G) of this section.

* * * * *

40. On page 46529, column 2, § 1.954–2 (h)(6), paragraph (i) of Example 3, lines 7 and 8, the language ''a floating rate of interest set at the London Interbank Offered Rate (LIBOR) plus one'' is corrected to read ''a floating rate of interest set at LIBOR plus one''.

41. On page 46529, column 3, § 1.954–2 (h)(6), paragraph (i) of Example 4, line 1 in the column, the language ''contemporaneously, enters into a 3 month'' is corrected to read ''contemporaneously, enter into a 3-month''.

§ 1.957–1 [Corrected]

42. On page 46529, column 3, § 1.957–1 (a)(2), the third line from the bottom of the paragraph, the language ''association, joint stock company, or'' is corrected to read ''association, joint stock company or''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

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26 CFR Part 1

[TD 8629]

RIN 1545–AL57

Certain Publicly Traded Partnerships Treated as Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the classification of certain publicly traded partnerships as corporations. These regulations provide guidance needed by taxpayers to comply with changes to the law made by the Omnibus Budget Reconciliation Act of 1987. The regulations affect the classification of certain partnerships for federal tax purposes.

DATES: These regulations are effective December 4, 1995.

For dates of applicability of these regulations, see § 1.7704–1(l).

FOR FURTHER INFORMATION CONTACT: Christopher T. Kelley, (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document adds § 1.7704–1 to the Income Tax Regulations (26 CFR part 1) relating to the definition of a publicly traded partnership under section 7704(b) of the Internal Revenue Code (Code).

Background

Section 7704 was added to the Code by section 10211(a) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), as amended by sections 2004(f)(1)–(5) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647). Section 7704(a) provides that a publicly traded partnership is treated as a corporation for federal tax purposes unless the partnership meets the 90 percent qualifying income test of section 7704(c) or qualifies as an existing partnership. The term *existing partnership* is defined in § 1.7704–2. Under section 7704(b), a partnership is a publicly traded partnership if interests in the partnership are traded on an established securities market or are readily tradable on a secondary market or the substantial equivalent thereof. Section 7704 applies to all domestic and foreign entities treated as partnerships under section 7701, including limited liability companies and other entities treated as partnerships for federal tax purposes.

Notice 88–75 (1988–2 C.B. 386) was issued to provide interim guidance on the definition of a publicly traded partnership under section 7704(b). Notice 88–75 provides that interests in a partnership are not treated as readily tradable on a secondary market or the substantial equivalent thereof for purposes of section 7704(b)(2) if the interests are: (1) Issued in certain private placements; (2) transferred pursuant to transfers not involving trading; (3) traded in amounts that meet the requirements of a 5-percent or 2-percent safe harbor; (4) transferred through a matching service that meets certain requirements; or (5) transferred pursuant to a qualifying redemption or repurchase agreement. Notice 88–75 does not address when partnership interests are treated as traded on an established securities market for purposes of section 7704(b)(1).

On May 2, 1995, the IRS published in the Federal Register a notice of proposed rulemaking (60 FR 21475) to provide guidance regarding section 7704(b). A number of public comments were received concerning the proposed regulations, and a public hearing was held on July 31, 1995. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Significant Comments and Revisions

The significant comments on the proposed regulations and the revisions made in the final regulations are discussed below.

Public Trading

Several commentators requested clarification of the definition of an established securities market, a secondary market, and the substantial equivalent of a secondary market. The definitions in the proposed regulations, however, are drawn directly from the legislative history to section 7704(b) and incorporate the most important elements of public trading within the meaning of section 7704(b). As a result, the final regulations generally adopt the definitions in the proposed regulations.

The final regulations contain two changes to the definition of a secondary market and the substantial equivalent thereof. The final regulations clarify that the determination of whether interests in a partnership are readily tradable on

a secondary market or the substantial equivalent thereof is based on all the facts and circumstances. In addition, the final regulations eliminate the separate definitions of a secondary market and the substantial equivalent thereof. This distinction is relevant in the proposed regulations because several of the safe harbors apply only to the substantial equivalent of a secondary market. As discussed below, this distinction is eliminated in the safe harbors. As a result, the separate definitions of a secondary market and the substantial equivalent thereof are no longer necessary, and they are combined into one definition in the final regulations.

The proposed regulations provide that the transfer of an interest in a partnership is taken into account for purposes of section 7704(b) only if the partnership recognizes the transfer of the interest or the interest is redeemed by the partnership. The preamble to the proposed regulations explains that this provision is intended to prevent a partnership from becoming publicly traded without the knowledge or participation of the partnership. Several commentators requested a clarification of this provision because the definition of a secondary market requires only that the interests be readily tradable, thereby creating some concern that the partnership could be publicly traded even if there were no actual transfer of an interest in the partnership.

The final regulations address this concern by providing more explicitly that interests in a partnership will not be treated as readily tradable on a secondary market or the substantial equivalent thereof unless (i) the partnership participates in the establishment of the market or the inclusion of its interests thereon, or (ii) the partnership recognizes transfers made on that market. This rule also applies to an established securities market that consists of an interdealer quotation system that regularly disseminates firm buy or sell quotations. These modifications will prevent a partnership from being publicly traded without the participation or consent of the partnership. This rule is not extended to established securities markets that consist of the exchanges described in the regulation because these exchanges list interests in the partnership only with the knowledge and participation of the partnership. In addition, the final regulations provide that transfers not recognized by the partnership are treated as private transfers and therefore do not count for purposes of the two-percent and 10-percent limitations in the safe harbors described below.

Safe Harbors

Several commentators requested clarification that, as in Notice 88–75, the failure of a partnership to satisfy the safe harbors does not establish or give rise to a presumption that the partnership was publicly traded. In response, the final regulations clarify that the fact that a partnership does not qualify for a safe harbor or that a transfer of an interest in the partnership is not within a safe harbor is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof. Thus, these transfers are examined under the general facts and circumstances test in the regulations.

Private Transfers

Several commentators requested that the definition of a block transfer be expanded to include transfers by a partner or any person related to the partner within the meaning of section 267(b) or section 707(b)(1). The commentators noted that interests in a partnership are often held by related persons and that, while the related group as a whole may hold more than a two-percent interest in the partnership, no individual partner in the group might hold more than a two-percent interest. This comment is adopted in the final regulations.

One commentator also suggested that the exception for transfers at death be clarified to include transfers from an estate or a testamentary trust. This comment is adopted in the final regulations.

Another commentator suggested that the exception for transfers by one or more partners of interests representing more than 50 percent of the total interests be expanded to include transfers of less than 50 percent. This comment is not adopted in the final regulations. The exception is provided to allow acquisition of control of a partnership without raising a concern that the transfers pursuant to the acquisition would result in the partnership being publicly traded. The exception is, however, amended by reducing the required amount to 50 percent or more of the interests in partnership capital and profits to coordinate the exception with section 708(b)(1)(B) terminations.

Redemption and Repurchase Agreements

Several commentators suggested that redemptions by an investment partnership for the net asset value of the redeemed interest should not be treated as a transfer for purposes of section 7704(b) because these transfers do not involve a third party broker or a commission or mark-up. This comment is not adopted in the final regulations. The redemption of a partnership interest combined with the issuance of an interest to a new partner can result in the creation of a secondary market or the substantial equivalent thereof within the meaning of section 7704(b), even if no third party or commission is present.

Qualified Matching Service

The proposed regulations provide that, to qualify as a matching service, the selling partner cannot enter into a binding agreement to sell an interest until the 15th calendar day after the date information regarding the offering is made available to potential buyers and the closing cannot occur until the 30th calendar day after the date the selling partner can enter into a binding agreement. One commentator suggested a reduction in these fixed time periods. This comment is not adopted in the final regulations. The time periods are necessary to ensure that the matching service does not rise to the level of a secondary market or the substantial equivalent thereof.

Several commentators raised various concerns about the provisions in the proposed regulations requiring subscribers to make certain representations and the provisions preventing the operator of the matching service from quoting certain prices and buying or selling interests for itself or on behalf of others. These provisions are deleted in the final regulations because the requirements for a matching service already provide that the service cannot list quotes that commit any person to buy or sell an interest. This modification, however, does not affect the general rule that a secondary market may exist if anyone, including the operator of a matching service, quotes prices at which it stands ready to buy or sell partnership interests.

Private Placements

The proposed regulations generally provide that interests in a partnership are not readily tradable on the substantial equivalent of a secondary market if (i) all interests in the partnership were issued in a transaction not required to be registered under the Securities Act of 1933; (ii) the partnership does not have more than 500 partners or the initial offering price of each unit was at least $20,000; and (iii) if the partnership has more than 50 partners, no more than 10 percent of the total interests in capital or profits are transferred during the year. Several

commentators suggested expanding this safe harbor to apply to the determination of a secondary market. Other commentators suggested eliminating the 10-percent limitation. Several commentators suggested increasing the 50-partner limit, such as to 100, and modifying the rule for counting the number of partners that looked through partners that were partnerships, grantor trusts, or S corporations. In response to these comments, the final regulations modify the private placement exception in the following respects.

First, the safe harbor is expanded to apply to a secondary market as well as the substantial equivalent of a secondary market. As a result, interests in a partnership that qualifies for the private placement safe harbor will not be readily tradable on a secondary market or the substantial equivalent thereof.

Second, the final regulations provide that the safe harbor does not apply to partnerships subject to Regulation S (17 CFR 230.901 et seq.), unless the offering and sale of interests in the partnership would not have been required to be registered if offered and sold within the United States. Regulation S, adopted after the issuance of Notice 88–75, provides an exception from registration for any offerings and sales outside of the United States, even if registration would have been required if the interests were offered and sold within the United States. This modification ensures that the private placement exception applies in a similar manner to offerings within and outside of the United States.

Third, the 10-percent limitation is not adopted in the final regulations. Instead, the final regulations provide that the safe harbor applies only if the partnership has no more than 100 partners at any time during the taxable year of the partnership.

Finally, the final regulations provide a new rule for determining the number of partners in a partnership. Under the proposed regulations, each person owning an interest in a partnership (lower-tier partnership) through another partnership, an S corporation, or a grantor trust (flow-through entity) is treated as a partner in the lower-tier partnership. The final regulations provide that an owner of a flow-through entity is treated as a partner in the lower-tier partnership only if (i) substantially all of the value of the flow-through entity is attributable to the lower-tier partnership interest, and (ii) a principal purpose for the tiered arrangement is to permit the partnership to satisfy the 100-partner requirement.

The requirement that substantially all of the value of the flow-through entity be attributable to the lower-tier partnership is intended to limit the look-through rule to flow-through entities that are economically equivalent to an interest in the lower-tier partnership. For example, if the only asset held by a flow-through entity is an interest in a lower-tier partnership, an interest in the flow-through entity is economically equivalent to an interest in the lower-tier partnership and the members of the flow-through entity should be counted as partners in the partnership. The requirement that there be a principal purpose to avoid the 100 partner rule recognizes that looking through a flow-through entity is not appropriate in all cases, even if the flow-through entity owns no interest other than an interest in the lower-tier partnership, but should be limited to situations in which a principal purpose of the flow-through entity is to avoid the 100 partner limitation.

Lack of Actual Trading

The proposed regulations provide that interests in a partnership are not readily tradable on the substantial equivalent of a secondary market if the sum of the percentage interests transferred during the taxable year does not exceed two percent. Several commentators suggested expanding this safe harbor to secondary markets so that partnerships could be assured that some level of trading would not result in public trading. This comment is adopted in the final regulations.

Qualifying Income

Several commentators requested guidance on the definition of *qualifying income* and *financial business* for purposes of the qualifying income exception of section 7704. These regulations are intended to address only the definition of public trading and therefore do not provide guidance on the definition of qualifying income. The IRS and Treasury, however, are actively considering guidance on the definition of qualifying income and financial businesses for investment partnerships and other partnerships engaged in various types of securities transactions. The IRS and Treasury invite comments on the scope and form of such guidance.

Transitional Relief

The proposed regulations provide that they will be effective for taxable years of a partnership beginning on or after the date final regulations are published. The preamble to the proposed regulations requests comments on whether transitional relief is necessary for partnerships that qualified for an exclusion under Notice 88–75. Many commentators suggested some form of transitional relief, ranging from 180 days to a permanent grandfather provision.

The final regulations provide that, for partnerships that were actively engaged in an activity before December 4, 1995, the regulations apply for taxable years beginning after December 31, 2005. This ten-year grandfather provision is similar to the grandfather rule provided on the enactment of section 7704. The final regulations provide that this transitional relief expires if the partnership adds a substantial new line of business within the meaning of § 1.7704–2. The transitional relief is not affected by a termination of the partnership under section 708(b)(1)(B). Finally, partnerships subject to transitional relief may continue to rely on Notice 88–75 for guidance.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these regulations is Christopher T. Kelley, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.7704–1 is added to read as follows:

§ 1.7704–1 Publicly traded partnerships.

(a) *In general*—(1) *Publicly traded partnership.* A domestic or foreign partnership is a publicly traded partnership for purposes of section 7704(b) and this section if—

(i) Interests in the partnership are traded on an established securities market; or

(ii) Interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.

(2) *Partnership interest*—(i) *In general.* For purposes of section 7704(b) and this section, an interest in a partnership includes—

(A) Any interest in the capital or profits of the partnership (including the right to partnership distributions); and

(B) Any financial instrument or contract the value of which is determined in whole or in part by reference to the partnership (including the amount of partnership distributions, the value of partnership assets, or the results of partnership operations).

(ii) *Exception for non-convertible debt.* For purposes of section 7704(b) and this section, an interest in a partnership does not include any financial instrument or contract that—

(A) Is treated as debt for federal tax purposes; and

(B) Is not convertible into or exchangeable for an interest in the capital or profits of the partnership and does not provide for a payment of equivalent value.

(iii) *Exception for tiered entities.* For purposes of section 7704(b) and this section, an interest in a partnership or a corporation (including a regulated investment company as defined in section 851 or a real estate investment trust as defined in section 856) that holds an interest in a partnership (lower-tier partnership) is not considered an interest in the lower-tier partnership.

(3) *Definition of transfer.* For purposes of section 7704(b) and this section, a transfer of an interest in a partnership means a transfer in any form, including a redemption by the partnership or the entering into of a financial instrument or contract described in paragraph (a)(2)(i)(B) of this section.

(b) *Established securities market.* For purposes of section 7704(b) and this section, an established securities market includes—

(1) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(2) A national securities exchange exempt from registration under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) because of the limited volume of transactions;

(3) A foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the Securities Exchange Act of 1934 described in paragraph (b) (1) or (2) of this section (such as the London International Financial Futures Exchange; the Marche a Terme International de France; the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited; the Frankfurt Stock Exchange; and the Tokyo Stock Exchange);

(4) A regional or local exchange; and

(5) An interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.

(c) *Readily tradable on a secondary market or the substantial equivalent thereof*—(1) *In general.* For purposes of section 7704(b) and this section, interests in a partnership that are not traded on an established securities market (within the meaning of section 7704(b) and paragraph (b) of this section) are readily tradable on a secondary market or the substantial equivalent thereof if, taking into account all of the facts and circumstances, the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to trading on an established securities market.

(2) *Secondary market or the substantial equivalent thereof.* For purposes of paragraph (c)(1) of this section, interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof if—

(i) Interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests;

(ii) Any person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others;

(iii) The holder of an interest in the partnership has a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; or

(iv) Prospective buyers and sellers otherwise have the opportunity to buy, sell, or exchange interests in the partnership in a time frame and with the regularity and continuity that is comparable to that described in the other provisions of this paragraph (c)(2).

(3) *Secondary market safe harbors.* The fact that a transfer of a partnership interest is not within one or more of the safe harbors described in paragraph (e), (f), (g), (h), or (j) of this section is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.

(d) *Involvement of the partnership required.* For purposes of section 7704(b) and this section, interests in a partnership are not traded on an established securities market within the meaning of paragraph (b)(5) of this section and are not readily tradable on a secondary market or the substantial equivalent thereof within the meaning of paragraph (c) of this section (even if interests in the partnership are traded or readily tradable in a manner described in paragraph (b)(5) or (c) of this section) unless—

(1) The partnership participates in the establishment of the market or the inclusion of its interests thereon; or

(2) The partnership recognizes any transfers made on the market by—

(i) Redeeming the transferor partner (in the case of a redemption or repurchase by the partnership); or

(ii) Admitting the transferee as a partner or otherwise recognizing any rights of the transferee, such as a right of the transferee to receive partnership distributions (directly or indirectly) or to acquire an interest in the capital or profits of the partnership.

(e) *Transfers not involving trading*—(1) *In general.* For purposes of section 7704(b) and this section, the following transfers (private transfers) are disregarded in determining whether interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof—

(i) Transfers in which the basis of the partnership interest in the hands of the transferee is determined, in whole or in part, by reference to its basis in the hands of the transferor or is determined under section 732;

(ii) Transfers at death, including transfers from an estate or testamentary trust;

(iii) Transfers between members of a family (as defined in section 267(c)(4));

(iv) Transfers involving the issuance of interests by (or on behalf of) the partnership in exchange for cash, property, or services;

(v) Transfers involving distributions from a retirement plan qualified under section 401(a) or an individual retirement account;

(vi) Block transfers (as defined in paragraph (e)(2) of this section);

(vii) Transfers pursuant to a right under a redemption or repurchase agreement (as defined in paragraph (e)(3) of this section) that is exercisable only—

(A) Upon the death, disability, or mental incompetence of the partner; or

(B) Upon the retirement or termination of the performance of services of an individual who actively participated in the management of, or performed services on a full-time basis for, the partnership;

(viii) Transfers pursuant to a closed end redemption plan (as defined in paragraph (e)(4) of this section);

(ix) Transfers by one or more partners of interests representing in the aggregate 50 percent or more of the total interests in partnership capital and profits in one transaction or a series of related transactions; and

(x) Transfers not recognized by the partnership (within the meaning of paragraph (d)(2) of this section).

(2) *Block transfers.* For purposes of paragraph (e)(1)(vi) of this section, a block transfer means the transfer by a partner and any related persons (within the meaning of section 267(b) or 707(b)(1)) in one or more transactions during any 30 calendar day period of partnership interests representing in the aggregate more than 2 percent of the total interests in partnership capital or profits.

(3) *Redemption or repurchase agreement.* For purposes of section 7704(b) and this section, a redemption or repurchase agreement means a plan of redemption or repurchase maintained by a partnership whereby the partners may tender their partnership interests for purchase by the partnership, another partner, or a person related to another partner (within the meaning of section 267(b) or 707(b)(1)).

(4) *Closed end redemption plan.* For purposes of paragraph (e)(1)(viii) of this section, a redemption or repurchase agreement (as defined in paragraph (e)(3) of this section) is a closed end redemption plan only if—

(i) The partnership does not issue any interest after the initial offering (other than the issuance of additional interests prior to August 5, 1988); and

(ii) No partner or person related to any partner (within the meaning of section 267(b) or 707(b)(1)) provides contemporaneous opportunities to acquire interests in similar or related partnerships which represent substantially identical investments.

(f) *Redemption and repurchase agreements.* For purposes of section 7704(b) and this section, the transfer of an interest in a partnership pursuant to a redemption or repurchase agreement (as defined in paragraph (e)(3) of this section) that is not described in paragraph (e)(1) (vii) or (viii) of this section is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof only if—

(1) The redemption or repurchase agreement provides that the redemption or repurchase cannot occur until at least 60 calendar days after the partner notifies the partnership in writing of the partner's intention to exercise the redemption or repurchase right;

(2) Either—

(i) The redemption or repurchase agreement requires that the redemption or repurchase price not be established until at least 60 calendar days after receipt of such notification by the partnership or the partner; or

(ii) The redemption or repurchase price is established not more than four times during the partnership's taxable year; and

(3) The sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in private transfers described in paragraph (e) of this section) does not exceed 10 percent of the total interests in partnership capital or profits.

(g) *Qualified matching services*—(1) *In general.* For purposes of section 7704(b) and this section, the transfer of an interest in a partnership through a qualified matching service is disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.

(2) *Requirements.* A matching service is a qualified matching service only if—

(i) The matching service consists of a computerized or printed listing system that lists customers' bid and/or ask quotes in order to match partners who want to sell their interests in a partnership (the selling partner) with persons who want to buy those interests;

(ii) Matching occurs either by matching the list of interested buyers with the list of interested sellers or through a bid and ask process that allows interested buyers to bid on the listed interest;

(iii) The selling partner cannot enter into a binding agreement to sell the interest until the 15th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location;

(iv) The closing of the sale effected by virtue of the matching service does not occur prior to the 45th calendar day after the date information regarding the offering of the interest for sale is made available to potential buyers and such time period is evidenced by contemporaneous records ordinarily maintained by the operator at a central location;

(v) The matching service displays only quotes that do not commit any person to buy or sell a partnership interest at the quoted price (nonfirm price quotes) or quotes that express interest in a partnership interest without an accompanying price (nonbinding indications of interest) and does not display quotes at which any person is committed to buy or sell a partnership interest at the quoted price (firm quotes);

(vi) The selling partner's information is removed from the matching service within 120 calendar days after the date information regarding the offering of the interest for sale is made available to potential buyers and, following any removal (other than removal by reason of a sale of any part of such interest) of the selling partner's information from the matching service, no offer to sell an interest in the partnership is entered into the matching service by the selling partner for at least 60 calendar days; and

(vii) The sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in private transfers described in paragraph (e) of this section) does not exceed 10 percent of the total interests in partnership capital or profits.

(3) *Closing.* For purposes of paragraph (g)(2)(iv) of this section, the closing of a sale occurs no later than the earlier of—

(i) The passage of title to the partnership interest;

(ii) The payment of the purchase price (which does not include the delivery of funds to the operator of the matching service or other closing agent to hold on behalf of the seller pending closing); or

(iii) The date, if any, that the operator of the matching service (or any person related to the operator within the meaning of section 267(b) or 707(b)(1)) loans, advances, or otherwise arranges for funds to be available to the seller in anticipation of the payment of the purchase price.

(4) *Optional features.* A qualified matching service may be sponsored or operated by a partner of the partnership (either formally or informally), the underwriter that handled the issuance

of the partnership interests, or an unrelated third party. In addition, a qualified matching service may offer the following features—

(i) The matching service may provide prior pricing information, including information regarding resales of interests and actual prices paid for interests; a description of the business of the partnership; financial and reporting information from the partnership's financial statements and reports; and information regarding material events involving the partnership, including special distributions, capital distributions, and refinancings or sales of significant portions of partnership assets;

(ii) The operator may assist with the transfer documentation necessary to transfer the partnership interest;

(iii) The operator may receive and deliver funds for completed transactions; and

(iv) The operator's fee may consist of a flat fee for use of the service, a fee or commission based on completed transactions, or any combination thereof.

(h) *Private placements*—(1) *In general.* For purposes of section 7704(b) and this section, except as otherwise provided in paragraph (h)(2) of this section, interests in a partnership are not readily tradable on a secondary market or the substantial equivalent thereof if—

(i) All interests in the partnership were issued in a transaction (or transactions) that was not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

(ii) The partnership does not have more than 100 partners at any time during the taxable year of the partnership.

(2) *Exception for certain offerings outside of the United States.* Paragraph (h)(1) of this section does not apply to the offering and sale of interests in a partnership that was not required to be registered under the Securities Act of 1933 by reason of Regulation S (17 CFR 230.901 through 230.904) unless the offering and sale of the interests would not have been required to be registered under the Securities Act of 1933 if the interests had been offered and sold within the United States.

(3) *Anti-avoidance rule.* For purposes of determining the number of partners in the partnership under paragraph (h)(1)(ii) of this section, a person (beneficial owner) owning an interest in a partnership, grantor trust, or S corporation (flow-through entity), that owns, directly or through other flow-through entities, an interest in the partnership, is treated as a partner in the partnership only if—

(i) Substantially all of the value of the beneficial owner's interest in the flow-through entity is attributable to the flow-through entity's interest (direct or indirect) in the partnership; and

(ii) A principal purpose of the use of the tiered arrangement is to permit the partnership to satisfy the 100-partner limitation in paragraph (h)(1)(ii) of this section.

(i) [Reserved].

(j) *Lack of actual trading*—(1) *General rule.* For purposes of section 7704(b) and this section, interests in a partnership are not readily tradable on a secondary market or the substantial equivalent thereof if the sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in transfers described in paragraph (e), (f), or (g) of this section) does not exceed 2 percent of the total interests in partnership capital or profits.

(2) *Examples.* The following examples illustrate the rules of this paragraph (j):

Example 1. Calculation of percentage interest transferred. (i) ABC, a calendar year limited partnership formed in 1996, has 9,000 units of limited partnership interests outstanding at all times during 1997, representing in the aggregate 95 percent of the total interests in capital and profits of ABC. The remaining 5 percent is held by the general partner.

(ii) During 1997, the following transactions occur with respect to the units of ABC's limited partnership interests—

(A) 800 units are sold through the use of a qualified matching service that meets the requirements of paragraph (g) of this section;

(B) 50 units are sold through the use of a matching service that does not meet the requirements of paragraph (g) of this section; and

(C) 500 units are transferred as a result of private transfers described in paragraph (e) of this section.

(iii) The private transfers of 500 units and the sale of 800 units through a qualified matching service are disregarded under paragraph (j)(1) of this section for purposes of applying the 2 percent rule. As a result, the total percentage interests in partnership capital and profits transferred for purposes of the 2 percent rule is .528 percent, determined by—

(A) Dividing the number of units sold through a matching service that did not meet the requirements of paragraph (g) of this section (50) by the total number of outstanding limited partnership units (9,000); and

(B) Multiplying the result by the percentage of total interests represented by limited partnership units (95 percent) ([50/9,000]×.95=.528 percent).

Example 2. Application of the 2 percent rule. (i) ABC operates a service consisting of computerized video display screens on which subscribers view and publish nonfirm price quotes that do not commit any person to buy or sell a partnership interest and unpriced indications of interest in a partnership interest without an accompanying price. The ABC service does not provide firm quotes at which any person (including the operator of the service) is committed to buy or sell a partnership interest. The service may provide prior pricing information, including information regarding resales of interests and actual prices paid for interests; transactional volume information; and information on special or capital distributions by a partnership. The operator's fee may consist of a flat fee for use of the service; a fee based on completed transactions, including, for example, the number of nonfirm quotes or unpriced indications of interest entered by users of the service; or any combination thereof.

(ii) The ABC service is not an established securities market for purposes of section 7704(b) and this section. The service is not an interdealer quotation system as defined in paragraph (b)(5) of this section because it does not disseminate firm buy or sell quotations. Therefore, partnerships whose interests are listed and transferred on the ABC service are not publicly traded for purposes of section 7704(b) and this section as a result of such listing or transfers if the sum of the percentage interests in partnership capital or profits transferred during the taxable year of the partnership (other than in transfers described in paragraph (e), (f), or (g) of this section) does not exceed 2 percent of the total interests in partnership capital or profits. In addition, assuming the ABC service complies with the necessary requirements, the service may qualify as a matching service described in paragraph (g) of this section.

(k) *Percentage interests in partnership capital or profits*—(1) *Interests considered*—(i) *General rule.* Except as otherwise provided in this paragraph (k), for purposes of this section, the total interests in partnership capital or profits are determined by reference to all outstanding interests in the partnership.

(ii) *Exceptions*—(A) *General partner with greater than 10 percent interest.* If the general partners and any person related to the general partners (within the meaning of section 267(b) or 707(b)(1)) own, in the aggregate, more than 10 percent of the outstanding interests in partnership capital or profits at any one time during the taxable year of the partnership, the total interests in partnership capital or profits are determined without reference to the interests owned by such persons.

(B) *Derivative interests.* Any partnership interests described in paragraph (a)(2)(i)(B) of this section are taken into account for purposes of determining the total interests in partnership capital or profits only if and to the extent that the partnership satisfies paragraph (d) (1) or (2) of this section.

(2) *Monthly determination.* For purposes of this section, except in the

case of block transfers (as defined in paragraph (e)(2) of this section), the percentage interests in partnership capital or profits represented by partnership interests that are transferred during a taxable year of the partnership is equal to the sum of the percentage interests transferred for each calendar month during the taxable year of the partnership in which a transfer of a partnership interest occurs (other than a private transfer as described in paragraph (e) of this section). The percentage interests in capital or profits of interests transferred during a calendar month is determined by reference to the partnership interests outstanding during that month.

(3) *Monthly conventions.* For purposes of paragraph (k)(2) of this section, a partnership may use any reasonable convention in determining the interests outstanding for a month, provided the convention is consistently used by the partnership from month to month during a taxable year and from year to year. Reasonable conventions include, but are not limited to, a determination by reference to the interests outstanding at the beginning of the month, on the 15th day of the month, or at the end of the month.

(4) *Block transfers.* For purposes of paragraph (e)(2) of this section (defining block transfers), the partnership must determine the percentage interests in capital or profits for each transfer of an interest during the 30 calendar day period by reference to the partnership interests outstanding immediately prior to such transfer.

(5) *Example.* The following example illustrates the rules of this paragraph (k):

Example. Conventions. (i) ABC limited partnership, a calendar year partnership formed in 1996, has 1,000 units of limited partnership interests outstanding on January 1, 1997, representing in the aggregate 95 percent of the total interests in capital and profits of ABC. The remaining 5 percent is held by the general partner.

(ii) The following transfers take place during 1997—

(A) On January 15, 10 units of limited partnership interests are sold in a transaction that is not a private transfer;

(B) On July 10, 1,000 additional units of limited partnership interests are issued by the partnership (the general partner's percentage interest is unchanged); and

(C) On July 20, 15 units of limited partnership interests are sold in a transaction that is not a private transfer.

(iii) For purposes of determining the sum of the percentage interests in partnership capital or profits transferred, ABC chooses to use the end of the month convention. The percentage interests in partnership capital and profits transferred during January is .95 percent, determined by dividing the number of transferred units (10) by the total number of limited partnership units (1,000) and multiplying the result by the percentage of total interests represented by limited partnership units ([10/1,000]×.95). The percentage interests in partnership capital and profits transferred during July is .7125 percent ([15/2,000]×.95). ABC is not required to make determinations for the other months during the year because no transfers of partnership interests occurred during such months. ABC may qualify for the 2 percent rule for its 1997 taxable year because less than 2 percent (.95 percent+.7125 percent=1.6625 percent) of its total interests in partnership capital and profits was transferred during that year.

(iv) If ABC had chosen to use the beginning of the month convention, the interests in capital or profits sold during July would have been 1.425 percent ([15/1,000]×.95) and ABC would not have satisfied the 2 percent rule for its 1997 taxable year because 2.375 percent (.95 + 1.425) of ABC's interests in partnership capital and profits was transferred during that year.

(l) *Effective date*—(1) *In general.* Except as provided in paragraph (l)(2) of this section, this section applies to taxable years of a partnership beginning after December 31, 1995.

(2) *Transition period.* For partnerships that were actively engaged in an activity before December 4, 1995, this section applies to taxable years beginning after December 31, 2005, unless the partnership adds a substantial new line of business after December 4, 1995, in which case this section applies to taxable years beginning on or after the addition of the new line of business. Partnerships that qualify for this transition period may continue to rely on the provisions of Notice 88–75 (1988–2 C.B. 386) (see § 601.601(d)(2) of this chapter) for guidance regarding the definition of readily tradable on a secondary market or the substantial equivalent thereof for purposes of section 7704(b).

(3) *Substantial new line of business.* For purposes of paragraph (1)(2) of this section—

(i) Substantial is defined in § 1.7704–2(c); and

(ii) A new line of business is defined in § 1.7704–2(d), except that the applicable date is ''December 4, 1995'' instead of ''December 17, 1987''.

(4) *Termination under section 708(b)(1)(B).* The termination of a partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits is disregarded in determining whether a partnership qualifies for the transition period provided in paragraph (l)(2) of this section.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 21, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 95–29282 Filed 11–29–95; 3:02 pm]
BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5339–1]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; State of Delaware

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by the State of Delaware. This program was submitted by the State for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: January 3, 1996.

ADDRESSES: Copies of the State of Delaware's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Robin M. Moran, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–3023.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Title V of the 1990 Clean Air Act Amendments (section 501–507 of the Clean Air Act (CAA)), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states seeking to administer a Title V operating permits program develop and submit a program to EPA by November 15, 1993, and that EPA act to approve or disapprove each program

within 1 year after receiving the submittal. EPA's program review is conducted pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval of an operating permits program submittal. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or, in the case of interim approval, by the expiration of the interim approval period, it must establish and implement a federal program.

On September 21, 1995, EPA proposed interim approval of the operating permits program for the State of Delaware. (See 60 FR 48944). EPA compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice, EPA is taking final action to promulgate interim approval of the operating permits program for the State of Delaware.

II. Analysis of State Submittal

On November 15, 1993, the State of Delaware submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR part 70. The submittal was supplemented by additional materials on November 22, 1993, and was found to be administratively incomplete pursuant to 40 CFR 70.4(e)(1) on January 18, 1994. Additional materials were submitted on February 9, 1994, and May 15, 1995. Based on the additional information, EPA found the submittal to be administratively complete on May 19, 1995. The State submitted supplemental information on September 5, 1995. EPA reviewed Delaware's program against the criteria for approval in section 502 of the CAA and the part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of Delaware's operating permits program (see 60 FR 48944; September 21, 1995) and the TSD for this action, that Delaware's operating permits program substantially meets the requirements of the CAA and part 70.

III. Public Comments

EPA received no public comments on the notice of proposed interim approval.

IV. Insignificant Activities

In the notice of proposed interim approval, EPA generally described Delaware's list of insignificant activities contained in Appendix A of Regulation No. 30. Today, EPA is clarifying its rationale for approving Delaware's insignificant activities provision. Although Delaware's Regulation No. 30 states that any information required by the permit application need not be submitted for insignificant activities listed or described in Appendix A, sources must provide a list of any activities excluded because of size, emissions rate, or production rate. The application form reflects this requirement and provides detail on the specific information that must be included. Delaware's regulation also requires applications to include information needed to determine the applicability of, or to impose, any applicable requirement, and that the emissions from insignificant activities shall be included when determining the applicability of any applicable requirement.

Paragraph (i) of Appendix A allows sources flexibility to consider as insignificant those activities for which no applicable requirement applies and which are not otherwise listed in the rule if they have the potential to emit at less than the following aggregate rates: 25 tons per year (tpy) of VOC in New Castle or Kent Counties or 50 tpy of VOC in Sussex County; 40 tpy of particulate [matter]; 15 tpy of PM–10; 40 tpy of sulfur dioxide (SO2); and 25 tpy of nitrogen oxides (NOx) in New Castle or Kent Counties or 100 tpy of NOx in Sussex County. While these emission levels for insignificant activities are higher than those approved by EPA for other states, EPA believes that Delaware's program is acceptable because Delaware, in fact, requires the application to contain more detailed information about these activities than many other State programs. Delaware's permit application form (#AQM–1001DD, submitted on February 9, 1994 and May 15, 1995) requires sources to identify the following information for insignificant activities based on emissions levels: the pollutant, emission rate (e.g., tons per year, pounds per day), number of units and type of source. This level of detail should ensure that Delaware has enough information to adequately establish permitting requirements and the applicable requirements of the Act. Because Delaware requires an acceptable level of information in the permit application form, EPA believes that the emission thresholds established in paragraph (i) of Appendix A need not be an interim approval issue for Delaware's program. Since this decision depends on the safeguard provided by the requirements in the application form, EPA will process changes to the application form that may reduce the quality or level of information relative to insignificant activities as a formal program revision; that is, application form revisions relative to insignificant activities will not be approved by way of an exchange of letters between EPA and the State of Delaware. Further, EPA's approval of Delaware's insignificant activities is based on Section 5(d) of Regulation No. 30 (Standard Application Form and Required Information) which states that the activities listed in Appendix A are to be included for purposes of determining whether a source is subject to the regulation. This provision ensures that the emissions levels established in paragraph (i) of Appendix A will not interfere with the determination of whether a source is major under the Clean Air Act.

Final Action

EPA is promulgating interim approval of the operating permits program submitted by the State of Delaware on November 15, 1993, with supplemental submittals on November 22, 1993, February 9, 1994, May 15, 1995, and September 5, 1995. The State of Delaware must make the changes identified in the notice of proposed rulemaking in order to fully meet the requirements of the July 21, 1992 version of part 70. (See 60 FR 48944, September 21, 1995). Delaware must adopt acid rain regulations by July 1, 1996, consistent with the commitment made in a September 5, 1995 letter to EPA.

The scope of the State's part 70 program applies to all part 70 sources (''covered sources'' as defined in the State's program) within the State, except for sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the CAA as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until January 5, 1998. During the interim approval period, Delaware is protected from sanctions for failure to have a fully approved Title V, part 70 program, and EPA is not obligated to promulgate, administer and enforce a federal permits program in the State. Permits issued

under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

If the State fails to submit a complete corrective program for full approval by July 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If the State then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the CAA, which will remain in effect until EPA determines that the State has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In any case, if, six months after application of the first sanction, the State still has not submitted a corrective program that EPA finds complete, a second sanction would be required.

If EPA disapproves the State's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to the date on which the sanction would be applied the State has submitted a revised program and EPA has determined that this program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determines that the State has come into compliance. In all cases, if, six months after EPA applies the first sanction, the State has not submitted a revised program that EPA has determined corrects the deficiencies that prompted disapproval, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to the State's program by the expiration of the interim approval period, EPA must promulgate, administer and enforce a federal operating permits program for the State upon the date the interim approval period expires.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

Additionally, EPA is promulgating approval of Delaware's operating permit program under the authority of Title V and part 70 for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of any necessary State rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of the operating permits program for this purpose will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this approval because of the direct linkage between implementation of section 112(g) and Title V. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the State with adequate time to adopt regulations consistent with federal requirements.

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action to propose interim approval of the State of Delaware's operating permits program pursuant to Title V of the CAA and 40 CFR part 70 does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

EPA has determined that this action, promulgating interim approval of the State of Delaware's operating permits program, does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 22, 1995.

W. Michael McCabe,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Delaware in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Delaware

(a) Department of Natural Resources and Environmental Control: submitted on November 15, 1993 and amended on November 22, 1993, February 9, 1994, May 15, 1995 and September 5, 1995; interim approval effective on January 3, 1996; interim approval expires January 5, 1998.

(b) [Reserved]

* * * * * *

[FR Doc. 95–29555 Filed 11–30–95; 1:07 pm]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25 and 32

RIN 1018–AC80

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) adds and/or amends certain regulations governing sport fishing and hunting for migratory game bird, upland/small game, and big game on individual national wildlife refuges. Refuge Managers continuously review hunting and fishing programs to respond to visitor interest in recreation activities and to ensure compatibility with the purposes for which the individual refuges were established. Modifications to existing programs may include programs deleted, modified or expanded based on fluctuating environmental conditions, changes to State and other Federal regulations, and other factors. Modifications are also designed, to the extent practical, to make refuge hunting and fishing programs consistent with existing State hunting and fishing regulations.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service; Telephone (703) 358–2029, X–5242.

SUPPLEMENTARY INFORMATION: 50 CFR part 25 contains general administrative provisions which govern national wildlife refuges. 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges (NWRs). Hunting and fishing are regulated on refuges to: (1) Ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled ''Conformance with Statutory and Regulatory Authorities.'' Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland or other small game hunting, big game hunting or sport fishing through publication in the Federal Register. These regulations may list the wildlife species that may be hunted or the species subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

In the August 16, 1995, issue of the Federal Register, 60 FR 42668, the Service published a proposed rulemaking and invited public comment on the proposed annual additions and/or modifications to the National Wildlife Refuge Hunting and Fishing Regulations. All substantive comments were reviewed and considered following a 30-day public comment period. The following represents a cross-section of the total concerns expressed.

Four State conservation agencies, one non-government organization, and 28 individuals commented on the proposed rulemaking. Nearly all comments were concerning the proposal to require the use or expansion of nontoxic shot on several refuges. This specific proposal would require the use of nontoxic shot while hunting on refuges for one or more species of wildlife other than waterfowl and coots, because of the likelihood of depositing toxic lead shot pellets on the land with resulting impacts to waterfowl and other migratory birds.

After evaluating the comments received, the Service has decided to delay nontoxic shot implementation until the 1996–97 hunting season on those refuges which were proposed to convert to nontoxic shot during the 1995–96 season. This action is being taken to allow adequate time for additional coordination and educational outreach with the affected States, hunting organizations and the general public on the effects of toxic lead shot to waterfowl and other migratory birds. Voluntary hunter use of nontoxic shotshells is requested during the 1995–96 hunting season.

The State of Wisconsin, Department of Natural Resources expressed the opinion that the Service has:

1. Not adequately documented the need for requiring nontoxic shot for hunting certain wildlife species other than ducks, geese and swans; and

2. Not provided the results of the scientific nontoxic shot studies to the public. The State believes the public is supportive of biologically sound regulations, but opposed to regulations without justification; and

3. Proposed the required use of nontoxic shot in an inconsistent manner. The State used Necedah NWR as an example where nontoxic shot would be required to hunt ruffed grouse, but not for hunting woodcock in the same general habitat.

Response

1. Lead shot from hunters' shotguns that is deposited in wetlands, seasonally flooded habitats, and upland habitats in close proximity to these wetlands is toxic to wildlife that directly ingest lead pellets during feeding, and secondarily toxic to predators and carrion feeders that consume these toxic wildlife carcasses. The documented scientific evidence is clear in this regard, and is available as indicated at the end of this response. What has not been adequately communicated to, and considered by some hunters and habitat managers, is the deposition of toxic lead shot into marginal or fringe wetland areas by hunting activities other than waterfowl and coot hunting. Nationwide, efforts are now underway to educate and activate programs to reduce this threat to waterfowl, raptors and other susceptible wildlife species. The proposed regulations were specific to point out that a scientifically recognized toxic lead problem exists in uplands that are periodically flooded and become feeding grounds for waterfowl and secondarily for bald eagles.

Scientific research has established that lead pellets ingested by waterfowl and secondarily by raptors including bald eagles results in the death of these animals due to toxic lead poisoning. When lead shot pellets are deposited during upland or small game hunting in dry areas that are subject to seasonal flooding, waterfowl and other migratory birds that feed in these areas during the period of high water are vulnerable to lead poisoning. Scientific information on the ''Toxicity of Lead Shot to Wildlife'' may be obtained by calling the U.S. Fish and Wildlife Reference Service at 1–800–582–3421 or by accessing the bibliographic databases information directly on the INTERNET at ''http://www.fws.gov/fwrefser.html''.

2. News articles concerning proposed regulations to address the adverse affects of hunting upland and other small game with toxic lead shot in upland areas subject to periodic flooding and seasonal wetland areas have been published in newspapers during the last 3 years. Nontoxic shot for hunting upland and other small game was first introduced to west coast refuges in the 1991–92 hunting season,

and to southwestern refuges during the 1992–93 hunting season. Refuges in Alaska and waterfowl production areas in the lower 48 States are scheduled to phase in nontoxic shot to hunt certain upland and small game by the 1997–98 and 1998–99 seasons respectively. Additional scientific information and data that forms the basis for these regulations will be provided to the States and public over the next few months, or may be requested as indicated in the previous paragraph.

3. The original proposal to require nontoxic shot while hunting woodcock at Necedah NWR was based on the fact that past hunting occurred in some areas subject to periodic flooding. After receiving public comments expressing concern that this specific requirement would cause confusion among hunters, the Service has agreed that neither grouse nor woodcock hunting will require nontoxic shot at Necedah NWR. This decision was based on the fact that areas subject to flooding can be partitioned away from the hunt area.

The Illinois Department of Conservation expressed general support for reducing the risks of lead poisoning in waterfowl, endangered species, and improving environmental quality, but could not support the proposed rule without the Service:

1. Providing adequate scientific evidence showing that a problem exists from upland/small game hunting with lead shot.

2. Conducting more site-specific studies in relation to lead shotshells and lead rifle bullets for hunting squirrels. Their recent study indicated that 47% of squirrel hunters in the northern half of Illinois hunted with shotguns, and the remainder used .22 caliber rimfire rifles and other weapons.

3. Providing adequate lead-time for hunters to become educated to toxic lead shot problems when hunting upland and other small game and supportive of corrective actions before the Service imposes this rule.

4. Delaying of the rule until at least the 1996–97 hunting season.

Response

1. Refer to Wisconsin number 1 response.

2. The regulations relating to nontoxic shot requirements were not intended to apply to rifle bullets and large buckshot. The rule has been clarified on this point. Site-specific evidence will be determined in accordance with Service policy before nontoxic shot will be required for hunting with larger shot such as buckshot, small rifle bullets such as .22 caliber or for shotgun hunting on nonseasonally flooded uplands.

3. The nontoxic shot program will be phased in starting in the 1996–97 season, rather than the 1995–96 hunting season. Voluntary compliance is requested during the 1995–96 season (refer to Wisconsin number 2 response).

4. The final rules adopting requirements to use nontoxic shot to hunt wildlife species other than waterfowl and coots on certain refuges will be applicable beginning with the 1996–97 hunting season, however, voluntary compliance will be requested prior to that time. Delays until the 1997–98 season are also authorized for Alaska, to allow coordination with the State and the outlying villages. Delays are also provided for the waterfowl production areas principally in the Dakotas, Montana, Wisconsin, and Iowa until the 1998–99 season, with voluntary compliance requested in the meantime.

The Florida Game and Freshwater Fish Commission requested that the Service reconsider the proposal to require nontoxic shot for hunting upland and other small game on certain National Wildlife Refuges. They expressed concern that:

1. requiring use of nontoxic shot for hunting small game in the absence of documented lead ingestion problems amounts to regulatory overkill.

2. the Service should require nontoxic shot only where specific documentation of toxic lead problems exist.

Response

1. Refer to Wisconsin number 1 response.

2. For the reasons, and based on the data referred to in the Wisconsin number 1 response, the Service has concluded that it is well documented that toxic problems indeed exist in the hunting situation as described in the regulations developed for the specific refuges.

The State of Indiana, Department of Natural Resources expressed the opinion that:

1. the amount of lead deposited in the wetlands of Muscatatuck NWR by the estimated 122 quail hunter visits would be very incidental and would contribute insignificantly to the adverse welfare of waterfowl using the refuge; and

2. they would rather not see this proposed regulation, which is a disparity to their State regulations, imposed on Indiana's upland game hunters at this time.

Response

After evaluating the comments from the State of Indiana, and re-evaluating the on-ground relationship of where quail and rabbit hunting occurs on the refuge, the Service has decided to remove Muscatatuck NWR from the listing of refuges requiring nontoxic shot to hunt upland and other small game. The Service believes it is possible to adequately zone the hunting area away from the margins of existing wetlands and those refuge lands subject to periodic flooding. Migratory waterfowl and other migratory birds will be adequately protected by implementing this measure.

The National Rifle Association of America objects to the proposed rule because:

1. The document fails to inform the public of the basis and purposes for imposing the nontoxic shot restrictions for upland game hunting on listed refuges.

2. The public has not been afforded a meaningful opportunity to comment on the proposal.

For these reasons, they recommend:

3. That a clear and concise statement of basis and purpose for the nontoxic shot requirements for upland game hunting on specific refuges be provided before a procedurally correct rulemaking on this issue is moved forward.

4. That this rulemaking be withdrawn and a new rulemaking initiated that recognizes this deficiency.

Response

As a basis for this rule, the Service has a responsibility to protect migratory birds as well as threatened and endangered species of wildlife from the toxic effects of lead shot poisoning due to hunting. The purpose of this rulemaking is to avoid the use of a known toxic substance, such as lead shot pellets, while hunting upland and other small game in an area where waterfowl and other migratory birds could be harmed or killed. The Service does not agree that there are any deficiencies in its procedures, but in order to more adequately educate and inform hunters and the general public of the new requirements, and coordinate with affected States, the Service will delay application of the nontoxic shot requirements until the 1996–97 season. Also, refer to Wisconsin number 1 response.

With respect to number 2 concern, a 30-day public comment period has been afforded the public to comment on the proposed rule. News articles concerning proposed regulations that address the adverse affects of hunting upland and other small game with toxic lead shot in upland areas subject to periodic flooding and seasonal wetland areas

have been published in newspapers during the last 3 years. Nontoxic shot for hunting upland and small game was first introduced to west coast refuges in the 1991–92 hunting season, and to southwestern refuges during the 1992–93 hunting season. Refuges in Alaska and waterfowl production areas in the lower 48 states are scheduled to phase in nontoxic shot to hunt certain upland and other small game by the 1997–98 and 1998–99 seasons respectively. Refer to Wisconsin number 2. response.

Individual comments received ranged from strong, general support for the proposed rule to total disagreement with the need to implement regulations. Specific concerns included:

1. All refuge lands should be off-limits to lead deposition because lead is a toxic environmental pollutant.

Response

The use of lead shot on National Wildlife Refuges will continue to be monitored and its use will be prohibited in those habitats where scientific evidence shows it is detrimental to wildlife resource values.

2. Support for a lead shot ban on refuge hunt areas, if the Service does not encourage the States to impose lead shot restrictions on State lands.

Response

The Service will continue to cooperate with State wildlife agencies to understand the toxic effects of lead shot deposition from hunting. The Service will also work with States in which waterfowl production areas are located to explore opportunities for conversion of both State and Federal areas where it will reduce threats to wildlife and minimize confusion to hunters.

3. Support for prohibition on private and public trap and skeet ranges using lead shot.

Response

Trap and skeet ranges are located outside of Service jurisdiction and, therefore, are regulated by private landowners, or in certain cases local jurisdictions.

4. Nontoxic shot is not readily available for purchase in the smaller shot sizes, and this will prevent the use of .410, 28 ga., and 20 ga. shotguns. Also, this would pose a disadvantage to young hunters and women who regularly use these shotguns for hunting.

Response

The Service acknowledges that commercial manufacture of steel shot is very limited in .410 and 28 gauge shotshells, however steel is being reloaded in these gauges by individual hunters. The Service's decision, however, must be based on its responsibilities to protected migratory birds from toxic shot hazards.

5. Most hunting for upland and small game is on high and dry terrain and not in wetlands.

Response

The intent of the Service's policy is to protect migratory birds whenever there are potential lead poisoning impacts in wetlands and associated uplands. Refuge managers followed national policy in selecting which refuges and what areas of those refuges to include in the regulations. Nontoxic shot conversions were proposed following these policy guidelines:

1. Nontoxic shot would be required for nonwaterfowl hunting programs that take place in wetlands, lands adjacent to wetlands, and lands seasonally flooded that have a potential for lead poisoning impacts to waterfowl and other migratory birds. 2. Nontoxic shot requirements do not apply to small-caliber rifle hunting for mammals or birds, or shotgun hunting for mammals in the absence of site-specific evidence of a significant impact. 3. This policy does not affect big game hunting programs, including turkey hunting.

6. A significant law enforcement problem exists when hunters are allowed to use both lead and nontoxic shot within the same hunt area at the same time, even though for different game species.

Response

Nontoxic shot hunting zones within refuges include those upland areas that are interspersed with wetlands, or where no distinct geographical or physical boundaries (fences, dikes, or roads) exist to distinguish the upland areas from the seasonal wetland areas. When hunters can easily distinguish wetlands from uplands through posting or mapping, then this entire area can be managed for both lead shot on the uplands and nontoxic shot on the lowlands. Likewise, a particular hunt program (i.e., a species hunt) that occurs on both wetlands *and* uplands will be converted to nontoxic shot refuge-wide when there are significant hunter compliance and/or enforcement problems. In general, if hunt areas can be posted, mapped or regulated adequately so that the hunter can reasonably expect to distinguish a nontoxic shot zone from a lead shot zone, then lead shot may be used within that respective zone. Also, if State game laws require nontoxic shot for hunting a particular species, then the refuges in that State will also require nontoxic shot for hunting that species.

7. Nontoxic shot (steel) is not compatible with shooting older, softer metal barreled shotguns, such as certain doubles, over-and-unders, general Damascus type, and the original Winchester Model 12 shotguns.

Response

Steel shot is definitely harder than lead shot, however modern shotgun barrels are designed to handle this shot without difficulty. The Service is aware that possible damage may occur from shooting modern loads in older model shotguns. However, the Service's responsibility is to protect migratory birds from the toxic shot impacts.

8. Cost of nontoxic shot is prohibitively expensive and hard to locate.

Response

Nontoxic shot (steel) costs more than the equivalent lead shotshell loads. Competition between manufacturers, due to waterfowl hunting nontoxic shot requirements, has increased the supply and somewhat reduced the overall price of steel shot. Nontoxic shot usually sells for $2–12 per box more than the equivalent size lead shot. Again, the Service's objective and responsibilities are to protect the migratory bird populations.

9. Crippling loss using nontoxic shot far outweighs the potential loss from using lead shot for hunting upland and other small game in fringe wetland areas.

Response

Most hunters find that if the target is within the 30–45 yard range, clean kills will occur. Some experienced hunters find that steel shot will penetrate better than lead shot. As hunters become more proficient with shooting nontoxic shot, crippling loss will be reduced dramatically.

10. Required use of nontoxic shot will cause hunters to abandon the sport, thereby resulting in a significant loss to Federal taxes on sporting arms and ammunition, and therefore less money for wildlife/habitat enhancement projects.

Response

Long-range indications are that hunting will account for less and less of the total percentage of recreational use on refuges, and funding sources for habitat protection and management will be harder to find in times of shrinking budgets. However, the Service does not believe that conversion to nontoxic shot

on selected refuges will contribute significantly to that trend.

11. The 104th Congress has banned Federal agencies from imposing new regulations, and this proposed rule is just another form of gun control, an anti-hunting ploy and a slap at our fundamental freedom.

Response

The regulation setting process is not intended as a manner of gun control, but rather as a resource protection measure and was drawn as narrowly as possible in order to provide the least restrictive hunting opportunity.

The intent of Congress is to reduce Federal regulatory burdens, and the Administration is in the process of reducing outdated and unnecessary rules. Congress, however, realizes that the hunting of migratory birds involves several treaty obligations with neighboring countries where migratory birds spend part of the year. Whether migratory birds are using national wildlife refuges or being hunted on State or private lands, there must be certain fair and equitable rules established. Therefore annual regulations are promulgated based on annual biological determinations of harvestable surpluses of game species.

Also, fishing on national wildlife refuges would be closed to the public without the establishment of annual regulations. Therefore, Congress has been receptive to appropriate rulemakings which allow hunters and fishermen the opportunity to participate in annual harvests.

The following questions and answers respond to the range of additional comments received from individuals concerning this proposed rule:

- What is the history of nontoxic shot requirements while hunting?

A nationwide phase-out program on the use of lead shot for waterfowl hunting began in 1986. By the 1991–92 season, only nontoxic (steel) shot was allowed for waterfowl and coot hunting. Prior to 1986 many national wildlife refuges required the use of steel shot because of locally documented lead poisoning in waterfowl.

- How will I know where to use nontoxic shot?

Site-specific brochures and information are available. Contact the refuge manager of the refuge you plan to hunt, and ask for an explanation of the nontoxic boundaries.

- Where can upland game continue to be hunted using lead?

Since State wildlife agencies and national wildlife refuges have limited the use of lead shot for the hunting of waterfowl and coots and now several areas are phasing in controls on upland and other small game hunting around wetlands, hunters should consult specific wildlife refuge regulations. The refuges proposed for nontoxic shot conversion in this rulemaking will remain open to the use of lead shot for upland and small game in the 1995–96 season, although voluntary use of nontoxic shot will be requested. Most waterfowl production areas of the prairie pothole country will remain open to the use of lead shot until the 1998–99 hunting season. Again, the Service will encourage the voluntary use of nontoxic shot on those areas.

- Where will hunters be required to use nontoxic shot?

A list of refuges by State is available from the Service's 7 regional offices, and from local refuge offices. The Federal Register, which also lists each refuge, is accessible from The National Wildlife Refuge Home Page on the INTERNET, location: ''http://bluegoose.ARW.R9.FWS.gov/'', or by calling 1–800–344–WILD and requesting a refuge brochure and a 1996–97 list of refuges where nontoxic shot is required to hunt one or more species of wildlife other than waterfowl and coot.

- How many kinds of nontoxic shot can hunters purchase?

Even though manufacturers are experimenting with other metals and alloys, steel shot is still the best and most readily available nontoxic shot. Bismuth shot has only recently become available on a limited and conditional basis.

- Where can nontoxic shot be purchased?

Steel shot is available locally at many large sporting goods stores that cater to waterfowl hunters. If they don't have exactly what you are looking for, they will no doubt recommend an alternate source.

- Are states requiring the use of nontoxic shot?

Many State wildlife agencies have imposed nontoxic shot regulations on wildlife management areas where waterfowl hunting also takes place, such as Indiana (for dove hunting), Missouri (for snipe and rail), and Tennessee (for doves). Other States, such as Nebraska, require nontoxic shot for all bird hunting on certain State management areas. In Utah, nontoxic shot is required to hunt sandhill cranes, and for all upland and small game hunting on two State management areas.

- Why do you permit hunting at all on National Wildlife Refugues?

Hunting is a part of our country's heritage. Many refuges were purchased with funds derived from the sale of duck stamps to waterfowl hunters. The National Wildlife Refuge System Administration Act authorizes recreation that is compatible with the primary purpose for which the refuges were established. Some refuges have hunting as a specific purpose of being acquired.

- Will big game (buckshot deer hunting) be included in the nontoxic shot requirement?

No. The regulation requires the use of nontoxic shot for certain upland and other small game only when hunting takes place in or near permanent or seasonal wetlands.

- What wildlife are considered upland or small game and covered by this regulation?

Each specific refuge regulation will specify what wildlife species can be hunted on that particular refuge. The intent of the regulation is to include all species of upland and small game that are hunted by shotgun in or near a permanent or seasonal wetland. The hunted species present there may include, but are not limited to, the following: pheasants, quail, snipe, dove, rabbits, woodcock, partridge, grouse, and rails.

- Why do raptors including bald eagles die from ingesting lead shot?

When a duck ingests lead shot into the gizzard/stomach while feeding, the lead will be deposited and lodge in the gizzard and stay there while being worn away through natural grinding processes. A mallard, for example, may ingest 2 pellets of #4 lead shot in the gizzard, and as the bird becomes weak and disoriented from the lead poisoning, it becomes an easy food source for all predators including raptors. When the bird is eaten by a marsh hawk or bald eagle, the lead is now going to enter the raptor's body. The toxic (secondary) effect of the lead may have caused the death of both the prey and the predator.

- Will small bore rifle hunting be included in the nontoxic shot regulation.

No, small bore rifle hunting is not included in the nontoxic shot requirement.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the

Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing, other public recreation, accommodations, and access, when the Secretary determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it for hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

Consideration was given to delaying this final rule for a 30-day period, however, the Service determined that any further delay in the implementation of these refuge-specific hunting and fishing regulations will hinder the effective planning and administration of the programs. Public comment was received on this proposal during the 30-day comment period for this rule. A delay of an additional 30 days will jeopardize holding the hunts or fishing programs this year, or shorten their duration and thereby lessen the management effectiveness of this regulation. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, good cause exists in that, in order to continue to provide for previously authorized hunting opportunities while at the same time provide for adequate resource protection, the Service must immediately put into place modifications to some of the hunting programs on some refuges. Therefore, in accordance with (5 U.S.C. 553(d)(3), these rules will become effective as of the date of publication in the Federal Register.

Economic Effect

This rulemaking is not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. Hunting and fishing programs take place throughout the United States on a very broad scale. No single program has a significant localized impact. While the proposed hunting and fishing programs could increase the number of hunting and fishing licenses purchased and boost sales of hunting and fishing gear, the impact would still not be considered significant when compared to other commercial activities in the surrounding area. This proposed rule would have minimal effect on such entities.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under Public law 104–13 and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form may be sent to the Service Information Collection Clearance Office, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20530.

Federalism

This final rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) is ensured when hunting and sport fishing plans are developed, and the determinations required by this act are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR Part 32. The changes in hunting and fishing have been reviewed with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and have been found to either, have no affect on, or are not likely to adversely affect listed species or critical habitat. The amendment of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The B.(5) Service exclusion is employed here as these amendments are considered ''[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures.'' These refuge-specific hunting and fishing revisions to existing regulations simply qualify or otherwise define an existing hunting or fishing activity for purposes of resource management. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are retained at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort

Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author. Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 25

Administrative practice and procedures, Reporting and recordkeeping requirements, Concessions, Safety, Wildlife refuges.

* * * * *

50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Parts 25 and 32 of Chapter I of Title 50 of the *Code of Federal Regulations* are amended as follows:

PART 25—[AMENDED]

1. The authority citation for Part 25 continues to read as follows:

Authority: 16 U.S.C. 460k, 664, 668dd, and 715i, and 3901 et seq.

§ 25.12 [Amended]

2. Section 25.12(a) is amended by adding the definition of nontoxic shot following the definition of National Wildlife Refuge System.

§ 25.12 Definitions.

* * * * *

Nontoxic shot means steel shot or other shot approved pursuant to 50 CFR 20.134.

* * * * *

PART 32—[AMENDED]

3. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

4. Section 32.7 is amended by adding the alphabetical listing of ''North Platte National Wildlife Refuge'' under the State of Nebraska.

5. Section 32.22 Arizona, is amended by revising paragraph A. of the Bill Williams River National Wildlife Refuge; and by adding paragraphs A., 8., through A.13. inclusive, revising paragraph B.4., and adding paragraphs B.5. and B.6. to Cibola National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

* * * * *

Bill Williams River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning and white-winged doves is permitted on designated areas of the refuge subject to the following condition: Legal weapon is shotgun only.

* * * * *

Cibola National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

8. Hunting is not permitted within 50 yards of any road or levee.

9. Decoys are required for waterfowl hunting and must be removed from the refuge daily.

10. Waterfowl hunters are limited to 10 shells per day in Farm Unit 2.

11. During the Arizona waterfowl season, Farm Unit 2 is closed to dove hunting until noon each day.

12. In Farm Unit 2, waterfowl hunters must remain within 50 feet of designated station while hunting except when actively retrieving downed birds.

13. During the goose season the Hart Mine Marsh Area is closed to hunting until 10 a.m. daily.

B. Upland Game Hunting. * * *

4. Hunting of cottontail rabbit is permitted from September 1 through the last day of the respective State's quail season.

5. During the Arizona waterfowl season, hunting of quail and rabbit is not permitted in Farm Unit 2 until noon.

6. Hunting is not permitted within 50 yards of any road or levee.

* * * * *

6. Section 32.23 *Arkansas* is amended by revising paragraphs B. and C. of Felsenthal National Wildlife Refuge; by revising paragraphs B. and C. of Overflow National Wildlife Refuge; and by revising paragraphs D.1. and D.4. of White River National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Felsenthal National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon, opossum, beaver, nutria, and coyote is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Overflow National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon, opossum, beaver, nutria, and coyote is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

White River National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 1 through November 30 except as posted and as follows: fishing is permitted year-round in LaGrueu, Essex, Prairie, and Brooks Bayous, Big Island Chute, Moon Lake and Belknap Lake next to Arkansas Highway 1, Indian Bay, the Arkansas Post Canal and adjacent drainage ditches, those borrow ditches located adjacent to the West bank of that portion of the White River Levee north of the Arkansas Power and Light Company power line right-of-way, and

all refuge owned waters located North of Arkansas Highway 1.

* * * * *

4. Frogging is permitted on all refuge owned waters open for sport fishing as follows: South of Arkansas Highway 1, frogging is permitted from the beginning of the State season through November 30; North of Arkansas Highway 1, frogging is permitted for the entire State season. The use of bow and arrow for taking bullfrogs is prohibited.

7. Section 32.24 *California* is amended by revising paragraphs A.1., A.2., and A.3. of Delevan National Wildlife Refuge; by adding new paragraph A.5. to Kesterson National Wildlife Refuge; by revising paragraphs A.1. and A.2. of Modoc National Wildlife Refuge; by revising paragraphs A.1., A.2., and B.1. of Sacramento National Wildlife Refuge; and by adding new paragraph A.5. and revising paragraph B. of San Luis National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds.
* * *

1. Firearms must be unloaded while being transported between parking areas and spaced blind areas.

2. Snipe hunting is not permitted in the spaced blind area.

3. Hunters assigned to the spaced blind area are restricted to within 100 feet of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the area.

* * * * *

Kesterson National Wildlife Refuge

A. Hunting of Migratory Game Birds.
* * *

5. Access to Salt Slough is via boats only. Boats may only be launched at the Highway 140 (Fremont Ford State Recreational Area) and Highway 165 access points. the use of air-thrust and/or inboard water thrust boats is not permitted. The speed limit of 5 mph is in effect.

* * * * *

Modoc National Wildlife Refuge

A. Hunting of Migratory Game Birds.
* * *

1. A permit issued by the refuge to hunters with advance reservations only is required for the first weekend.

2. After the first weekend of the open season, hunting is permitted only on Tuesdays, Thursdays, and Saturdays. Hunters must check in and out of the refuge by use of self-service permits.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds.
* * *

1. Firearms must be unloaded while being transported between parking areas and spaced blind areas.

2. Snipe hunting is not permitted in the spaced blind area.

* * * * *

B. Upland Game Hunting. * * *

1. A special one-day only, pheasant hunt is permitted in the spaced blind area on the first Monday after the opening of the State pheasant hunting season.

* * * * *

San Luis National Wildlife Refuge

A. Hunting of Migratory Game Birds.
* * *

5. Vehicles may stop only at designated parking areas. Dropping of passengers or equipment, or stopping between designated parking areas is prohibited.

B. Upland Game Hunting. Hunting of pheasants is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only nontoxic shotshells (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

2. Hunters may not possess more than 25 shotshells while in the field.

* * * * *

7a. Section 32.25 *Colorado* is amended by revising paragraphs A. and B. of Arapaho National Wildlife Refuge to read as follows:

§ 32.25 Colorado.

* * * * *

Arapaho National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is allowed on designated areas of the refuge pursuant to State law.

B. Upland Game Hunting. Upland game hunting is allowed on designated areas of the refuge pursuant to State law and subject, also, to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

8. Section 32.27 *Delaware* is amended by adding new paragraph B.4., revising introductory language of paragraph C., and adding new paragraph C.4. to Bombay Hook National Wildlife Refuge; and by adding new paragraph B.4. to Prime Hook National Wildlife Refuge to read as follows:

§ 32.27 Delaware.

* * * * *

Bombay Hook National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

4. Shotgun hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

C. Big Game Hunting. Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following conditions: * * *

4. A valid State permit is required for turkey hunting.

* * * * *

Prime Hook National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

4. Shotgun hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

9. Section 32.31 *Idaho* is amended by revising paragraph D. of Kootenai National Wildlife Refuge to read as follows:

§ 32.31 Idaho.

* * * * *

Kootenai National Wildlife Refuge

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D. Sport Fishing. Fishing is permitted only on Myrtle Creek subject to the following condition: Only bank fishing is permitted. Fishing from boats, float tubes, or other personal flotation devices is prohibited.

* * * * *

10. Section 32.32 *Illinois* is amended by revising paragraph D.1. and adding new paragraph D.5. to Chautauqua National Wildlife Refuge; by adding new paragraphs A.3., A.4. and B.3. to Crab Orchard National Wildlife Refuge; by adding new paragraph (B.3., and revising paragraph C. of Cypress Creek National Wildlife Refuge; by adding new paragraph B.3. to Mark Twain National Wildlife Refuge; and by adding new paragraph B.4. to Upper Mississippi River National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Chautauqua National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Sport fishing is allowed on Lake Chautauqua from February 15 through October 15. Sport fishing is not allowed in the Waterfowl Hunting Area during waterfowl hunting season.

* * * * *

5. Weis Lake on the Cameron Unit is closed to all public entry from October 16 through February 14.

Crab Orchard National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Waterfowl hunters may not possess more than 20 shells during the combined duck and goose seasons. Goose hunters may not possess more than 10 shells during the goose season.

4. Hunting in the Cambria Neck dove field is closed on Tuesdays and Thursdays. All Cambria Neck dove hunters are required to sign in and out and report their harvest.

B. Upland Game Hunting. * * *

3. Only nontoxic shot may be used or possessed while hunting all permitted birds, except wild turkeys (nontoxic shot regulation to be effective starting with the 1996–97 hunting season). The possession and use of lead shot is still permitted for wild turkey hunting.

* * * * *

Cypress Creek National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

3. Only nontoxic shot may use used or possessed while hunting bobwhite quail (nontoxic shot regulations to be effective starting with the 1996–97 hunting season).

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must check in and out of the refuge each day of hunting.

2. Hunting blinds may not be left overnight on the refuge.

* * * * *

Mark Twain National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

3. Only nontoxic shot may be used or possessed while hunting all permitted birds, except wild turkeys (nontoxic shot regulation to be effective starting with the 1996–97 hunting season). The possession and use of lead shot is still permitted for wild turkey hunting.

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Upper Mississippi River National Wildlife and Fish Refuge

* * * * *

B. Upland Game Hunting. * * *

4. Shotgun hunters may only use or possess nontoxic shot when hunting for any permitted birds or other small game, except wild turkey (nontoxic shot regulation to be effective starting with the 1996–97 hunting season). The possession of lead shot is still permitted for wild turkey hunting.

* * * * *

11–12. Section 32.34 *Iowa* is amended by revising paragraph B. of Union Slough National Wildlife Refuge; and by adding new paragraph B.3. to Walnut Creek National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

Union Slough National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game is permitted in designated areas of the refuge subject to the following condition: Only nontoxic shot may be used or possessed while hunting all permitted birds, except wild turkeys (nontoxic shot regulation to be effective starting with the 1996–97 hunting season). The possession and use of lead shot is still permitted for wild turkey hunting.

* * * * *

Walnut Creek National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

3. All hunters must wear one or more of the following articles of visible, external, solid blaze orange clothing: a vest, coat, jacket, sweatshirt, sweater, shirt or coveralls.

* * * * *

13. Section 32.35 *Kansas* is amended by revising paragraphs B. and C. of Flint Hills National Wildlife Refuge; and by revising paragraphs A. and B. of Quivira National Wildlife Refuge to read as follows:

§ 32.35 Kansas.

* * * * *

Flint Hills National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. Dogs may not be used for hunting furbearing animals or non-game animals.

2. Hunters shall possess and use, while in the field, only nontoxic shot or rimfire firearms (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

C. Big Game Hunting. Hunting of big game is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns, muzzleloading firearms, or bow and arrow are permitted except during controlled hunts.

2. Hunters shall possess and use, while in the field, only nontoxic shot while shotgun hunting for turkey.

* * * * *

Quivira National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, rails (Virginia and Sora only), mourning doves, and common snipe is permitted on designated areas of the refuge subject to the following condition: Nontoxic shot is required when hunting any game on the refuge. The possession of lead shot in the field is prohibited.

B. Upland Game Hunting. Hunting of pheasant, bobwhite quail, squirrel, and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. The refuge is closed to all hunting from March 1 through August 31.

2. Squirrels and rabbits may only be hunted during the portion of the Kansas seasons that fall outside the March 1 through August 31 closed period.

* * * * *

14. Section 32.36 *Kentucky* is amended by revising paragraph D.1. of Reelfoot National Wildlife Refuge to read as follows:

§ 32.36 Kentucky.

* * * * *

Reelfoot National Wildlife Refuge

* * * * *

D. Short Fishing. * * *

1. Fishing is permitted on the Long Point Unit (north of Upper Blue Basin) from March 15 through November 15 and on the Grassy Island Unit (south of the Upper Blue Basin) from February 1 through November 15.

* * * * *

15. Section 32.37 *Lousiana* is amended by revising paragraphs A, B, C, and D of Bayou Cocodrie National Wildlife Refuge; revising paragraphs B., D.1., D.4. and removing paragraph D.5. of Catahoula National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Bayou Cocodrie National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of woodcock is permitted on designated areas of the refuge subject to

the following conditions: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon, opossum and coyote is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

D. Sport Fishing. [Reserved]

* * * * *

Catahoula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of raccoon, squirrel, rabbit, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from one hour before sunrise until one-half hour after sunset. Only pole and line or rod and reel fishing is permitted. Snagging is prohibited.

* * * * *

4. All other refuge waters, including Duck Lake, Muddy Bayou, ditches, all outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31.

* * * * *

16. Section 32.38 *Maine* is amended by revising paragraph B.2. of Rachel Carson National Wildlife Refuge; and by revising paragraphs A. and B. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

§ 32.38 Maine.

* * * * *

Rachel Carson National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

2. Shotgun hunters will possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Sunkhaze Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge pursuant to State law.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Shotgun hunters will and possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

17. Section 32.39 *Maryland* is amended by adding new paragraph B.6. to Patuxent Wildlife Research Center to read as follows:

§ 32.39 Maryland.

* * * * *

Patuxent Wildlife Research Center

* * * * *

B. Upland Game Hunting. * * *

6. Shotgun hunters will possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

18. Section 32.40 *Massachusetts* is amended by adding new paragraph B.3. to Oxbow National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Oxbow National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

3. Hunters will possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

19. Section 32.42 *Minnesota* is amended by adding new paragraph B.1. to Big Stone National Wildlife Refuge; by adding new paragraph B.3. to Minnesota Valley National Wildlife Refuge; by revising paragraphs A., B., C., and D. of Morris Wetland Management District; by adding new paragraphs A.1. and B.1. and revising paragraph C.4. of Rice Lake National Wildlife Refuge; by adding new paragraphs A.5. and B.1. to Sherburne National Wildlife Refuge; and by revising introductory language of paragraph A. and revising paragraph B. of Tamarac National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Big Stone National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Only nontoxic shot may be used or possessed while hunting for partridge or ring-necked pheasant (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Minnesota Valley National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

3. Only nontoxic shot may be used or possessed while hunting for ring-necked pheasant (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Morris Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district.

C. Big Game Hunting. Big game hunting is permitted throughout the district.

D. Sport Fishing. Sport fishing is permitted throughout the district.

Rice Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds

* * *

1. Shotgun hunters may only use or possess nontoxic shot while hunting migratory game birds.

B. Upland Game Hunting. * * *

1. Shotgun hunters may only use or possess nontoxic shot while hunting upland game species (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

C. Big Game Hunting. * * *

4. Hunting of deer on the Rice Lake Unit is by firearm and archery; hunting on the Sandstone Unit is by archery only.

* * * * *

Sherburne National Wildlife Refuge

* * * * *

A. Hunting of Migratory Game Birds.

* * *

5. Shotgun hunters may use or possess only nontoxic shot while hunting for migratory game birds.

B. Upland Game Hunting. * * *

1. Shotgun hunters may use or possess only nontoxic shot while hunting for all upland game species (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Tamarac National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

B. Upland Game Hunting. Hunting of ruffed grouse, gray and fox squirrel,

cottontail rabbit, jackrabbit, snowshoe hare, red fox, raccoon, and striped skunk is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting by tribal members is in accordance with White Earth Indian Reservation regulations on those parts of the Reservation that are part of the refuge.

2. Red fox, raccoon, and striped skunk may be hunted only from one-half hour before sunrise until sunset during open seasons for other small game species. Dogs may not be used for fox or raccoon hunting.

* * * * *

20. Section 32.45 *Montana* is amended by revising paragraph B. of Black Coulee National Wildlife Refuge; by adding paragraph B.3. to Bowdoin National Wildlife Refuge; by revising paragraph B. of Lake Mason National Wildlife Refuge; by revising paragraphs A., C., and D. of Lee Metcalf National Wildlife Refuge; and by revising paragraph B. of Warhorse National Wildlife Refuge to read as follows:

§ 32.45 Montana.

* * * * *

Black Coulee National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Bowdoin National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Lake Mason National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Lee Metcalf National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters may not use or possess more than 15 shells per day.

2. Shooting is permitted only from or within 10 feet of designated blinds.

3. Maximum of 5 hunters per blind.

4. Hunters are required to record hunt information at Hunter Access Points.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer and mule deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.

2. Hunters are required to enter and exit and record hunt information at Hunter Access Points.

3. Deer stands left on the refuge must be identified with a name and address and be accessible to other hunters.

4. Deer may not be retrieved from closed areas without prior consent from the refuge staff.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge. All fishing is pursuant to State law.

* * * * *

Warhorse National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game birds is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

21. Section 32.46 *Nebraska* is amended by revising the alphabetical listing of North Platte National Wildlife Refuge to read as follows:

§ 32.46 Nebraska.

* * * * *

North Platte National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Sport fishing is allowed on designated areas of the refuge pursuant to State law.

* * * * *

22. Section 32.47 *Nevada* is amended by revising paragraphs A. of Ash Meadows National Wildlife Refuge; revising paragraph C. of Desert National Wildlife Refuge; revising paragraphs A. of Pahranagat National Wildlife Refuge; and revising paragraphs A. of Ruby Lake National Wildlife Refuge to read as follows:

§ 32.47 Nevada.

* * * * *

Ash Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, snipe, and doves is permitted on designated areas of the refuge.

* * * * *

Desert National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of bighorn sheep is permitted on designated areas of the range subject to the following conditions:

1. Bighorn sheep guides are required to obtain a Special Use Permit prior to taking clients onto the range.

2. Natural bighorn sheep mortality (pick-up heads) found on the range are government property and possession or removal of them from the range is not permitted.

* * * * *

Pahranagat National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, snipe, and mourning doves is permitted on designated areas of the refuge subject to the following conditions;

1. Only nonmotorized boats or other motorless flotation devices are permitted on the refuge hunting area during the migratory waterfowl hunting season.

2. Hunting of waterfowl, coots, and moorhens is permitted only on the opening weekend and Tuesday, Thursday, and Saturday throughout the remainder of the season.

* * * * *

Ruby Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, and snipe is permitted on designated areas of the refuge.

* * * * *

23. Section 32.49 *New Jersey* is amended by adding paragraph A.7 to Edwin B. Forsythe National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Edwin B. Forsythe National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

7. Shotgun hunters will possess and use, while in the field, only nontoxic shot.

* * * * *

24. Section 32.50 *New Mexico* is amended by adding paragraphs A.5 and

6; revising paragraphs B.; and revising paragraph C. to *Bitter Lake National Wildlife Refuge* to read as follows:

§ 32.50 New Mexico.

* * * * *

Bitter Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds.
* * *

5. Hunting in Hunt Area B is permitted on all days within the State authorized season.

6. Hunting in Hunt Area C is permitted from mid-October through the end of January, on Tuesday, Thursday, and Saturday of each week from one-half hour before sunrise to 1 p.m. Dove hunting is prohibited in Hunt Area C.

B. Upland Game Hunting. Hunting of pheasant, quail, cottontail, and jack rabbits is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only nontoxic shot.

2. Hunting in Hunt Area B is permitted on all days within the State authorized seasons.

3. The hunting of rabbit and quail is prohibited in Hunt Area C.

C. Big Game Hunting. Hunting of mule deer and white-tailed deer is permitted on designated areas of the refuge.

* * * * *

25. Section 32.51 *New York* is amended by adding new paragraph B.4. to Iroquois National Wildlife Refuge to read as follows:

§ 32.51 New York.

* * * * *

Iroquois National Wildlife Refuge

* * * * *

B. Upland Game Hunting * * *

4. Shotgun hunters will possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

26. Section 32.52 *North Carolina* is amended by revising paragraph D.1. of Pee Dee National Wildlife Refuge; and by revising introductory language of paragraph B., revising paragraph C.2., and adding new paragraphs B.7., B.8., C.8. and C.9. to Pocosin Lakes National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Pee Dee National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 15 thru October 15.

* * * * *

Pocosin Lakes National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, squirrel, raccoon, opossum, rabbit, and fox is permitted on designated areas of the refuge subject to the following conditions: * * *

7. Hunters shall use only shotguns and/or 22 caliber rim-fire rifles for upland game hunts.

8. Hunters shall possess and use, while in the field, only nontoxic shot on designated areas of the refuge (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

C. Big Game Hunting. * * *

2. Only shotguns, muzzle-loaders, and bow and arrow are allowed for big game hunts.

* * * * *

8. Archery hunting on the Pungo Unit is permitted during the regular State archery season and from November 1 through 30. State bag limits apply.

9. Shotgun, muzzle-loaders, and bow and arrow are permitted on the Pungo Unit subject to the following condition: Permits are required.

* * * * *

27. Section 32.53 *North Dakota* is amended by revising paragraph B. of Arrowwood National Wildlife Refuge; by revising paragraphs B., C.1., C.2., and adding paragraphs C.3. through C.7. inclusive to Audubon National Wildlife Refuge; by adding paragraph B.3. to J. Clark Salyer National Wildlife Refuge; by revising paragraph B. of Lake Alice National Wildlife Refuge; by revising paragraph C. of Lake Nettie National Wildlife Refuge; by revising paragraphs B., C., and D. of Long Lake National Wildlife Refuge; by adding paragraph B.3. to Lostwood National Wildlife Refuge; by revising paragraph C. of Slade National Wildlife Refuge; and by revising paragraphs B. and C. of Tewaukon National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Arrowwood National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant, sharp-tailed grouse, partridge, rabbit and fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted from December 1st through the end of the regular seasons.

2. Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Audubon National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of ring-necked pheasants, gray partridge and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted from December 1 until the close of the State season.

2. Only nontoxic shot is permitted for upland game hunting (nontoxic shot regulation to be effective starting with the 1996–97 hunting seasons).

3. All islands are closed to hunting.

4. Vehicle use is restricted to the tour route road only.

C. Big Game Hunting. * * *

1. Rifle and muzzleloader deer hunting opens according to State regulations.

2. Refuge and State permits are required for the first one and one-half days of the State rifle season.

3. Orange clothing is required for deer hunters as per State regulations.

4. Hunting with bow and arrow is permitted only the day following the close of the State deer firearms season through the close of the State archery season.

5. All islands are closed to hunting.

6. All refuge roads are closed for use by rifle deer hunters except for retrieval of deer.

7. Muzzleloader and archery deer hunters may use the auto tour route for access during the hunt and all roads for retrieval of deer.

* * * * *

J. Clark Salver National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Lake Alice National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of upland game and fox is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Lake Native National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Deer hunting with rifle and muzzleloader is subject to all State regulations and license units.

2. Deer archery hunting is open the day following the close of the rifle deer hunting season through the close of the State archery season.

* * * * *

Long Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of ring-necked pheasant, sharp-tailed grouse and gray partridge is permitted on designated areas of the refuge subject to the following conditions:

1. Only steel shot may be used (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

2. Upland gamebird season is from December 1 through the end of the State season.

C. Big Game Hunting. Hunting of deer only is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must enter the refuge on foot only.

2. Archery hunting is not allowed during the firearm deer season.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Bank fishing is restricted to public use areas on Unit 1, Unit 2, and Long Lake Creek.

2. Boat fishing is restricted to Unit 1.

3. Boats are restricted to 25 HP maximum.

4. Boats are restricted to the period from May 1 through September 30.

5. Ice fishing is restricted to Unit 1.

6. Ice houses must be removed by March 1 annually.

Lostwood National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

Slade National Wildlife Refuge

* * * * *

C. Big Game Hunting. Deer hunting is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters may enter the refuge on foot only.

2. Archery hunting is not allowed during the firearm deer season.

* * * * *

Tewaukon National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of ring-necked pheasant is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge.

* * * * *

28. Section 32.55 *Oklahoma* is amended by revising paragraphs C. and D.4. of Wichita Mountains Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Wichita Mountains National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of elk and white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits and payment of a fee are required.

D. Sport Fishing. * * *

4. Lake Elmer Thomas is open to fishing. Bass fishing on Lake Elmer Thomas is restricted to catch and release.

* * * * *

29. Section 32.56 *Oregon* is amended by revising paragraphs A.1., A.2., A.5., B., D.1., D.3., and removing paragraphs A.6., A.7., B.5., and D.5. of Cold Springs National Wildlife Refuge; by revising paragraphs A.2. and B.1. of Malheur National Wildlife Refuge; by revising paragraphs A.1., A.2., A.4., A.5., A.6., B., D.1., and D.2., and adding new paragraph D.3., and removing paragraph A.7. of McKay Creek National Wildlife Refuge; and by revising paragraphs A.1., A.4., A.5., revising introductory language of paragraph B., revising paragraphs B.1., B.3., B.4., B.5., D.1. through D.4. inclusive, and removing paragraphs A.6. through A.8. inclusive of Umatilla National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Cold Springs National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys and other personal property may not be left on the refuge overnight.

2. Hunting is permitted only on Tuesdays, Thursdays, Saturdays, Thanksgiving Day, Christmas Day and New Year's Day.

* * * * *

5. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant, chukar, Hungarian partridge, and quail is permitted on designated areas of the refuge subject to the following conditions:

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Hunting is permitted only on Tuesdays, Thursdays, Saturdays, Thanksgiving Day, Christmas Day and New Year's Day.

3. Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

4. Hunters may not possess more than 25 shells while in the field.

* * * * *

D. Sport Fishing. * * *

1. Use of non-motorized boats and boats with electric motors is permitted from March 1 through September 30.

* * * * *

3. Fishing is permitted only with hook and line.

* * * * *

Malheur National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

2. Snipe and dove hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

1. Hunting of pheasant, quail, partridge, and rabbit is permitted from the third Saturday in November to the end of the State pheasant season in designated zones of the Blitzen Valley east of Highway 205. Hunting is also permitted on Malheur Lake during the waterfowl hunting season.

* * * * *

McKay Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds.

* * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys and other personal property may not be left on the refuge overnight.

2. Hunting is permitted only on Tuesdays, Thursdays and Saturdays, Thanksgiving Day, Christmas and New Year's Day.

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

5. Permits are required for the opening weekend of the season when it coincides with the season opening for upland game birds.

6. The use of boats is prohibited.

B. Upland Game Hunting. Hunting of pheasant, chukar, Hungarian partridge, and quail is permitted on designated areas of the refuge subject to the following conditions:

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Hunting is permitted only on Tuesdays, Thursdays, Saturdays, Thanksgiving Day, Christmas Day and New Year's Day.

3. Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

4. Hunters may not possess more than 25 shells while in the field.

5. Permits are required for the opening weekend of the season.

* * * * *

D. Sport Fishing. * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Fishing permitted from March 1 through September 30.

3. Fishing is permitted only with hook and line.

* * * * *

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset except for the Hunter Check Station parking lot at the McCormack Unit which is open each morning two hours prior to State shooting hours for waterfowl. Decoys, boats and other personal property must be removed from the refuge following each day's hunt.

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

5. Permits are required for hunting on the McCormack Unit.

B. Upland Game Hunting. Hunting of pheasant, chukar, Hungarian partridge, and quail is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is not allowed until noon of each hunt day.

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

4. Hunters may not possess more than 25 shells while in the field.

5. Permits are required for hunting on the McCormack Unit.

* * * * *

D. Sport Fishing. * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Fishing is permitted on refuge impoundments and ponds from February 1 through September 30. Other refuge waters (Columbia River and its backwaters) are open in accordance with State regulations.

3. Only non-motorized boats and boats with electric motors are permitted on refuge impoundments and ponds.

4. Fishing is permitted only with hook and line.

* * * * *

30. Section 32.57 *Pennsylvania* is amended by adding new paragraph B.5. to Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Erie National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

5. Shotgun hunters will possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

31. Section 32.60 *South Carolina* is amended by revising paragraph A. of Santee National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

* * * * *

Santee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves, ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

32. Section 32.61 *South Dakota* is amended by revising paragraph B. of Pocasse National Wildlife Refuge to read as follows:

§ 32.61 South Dakota.

* * * * *

Pocasse National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

33. Section 32.62 *Tennessee* is amended by revising paragraph D.1. of Cross Creeks National Wildlife Refuge; and by revising introductory language of paragraph D. and revising paragraph D.1. of Lake Isom National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

* * * * *

Cross Creeks National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted on refuge pools and reservoirs from March 15 through October 31 from sunrise to sunset.

* * * * *

Lake Isom National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 15 through October 15 only from sunrise to sunset.

* * * * *

34. Section 32.64 *Utah* is amended by revising paragraph B. of Ouray National Wildlife Refuge to read as follows:

§ 32.64 Utah.

* * * * *

Ouray National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

35. Section 32.65 *Vermont* is amended by revising paragraphs B.1. and B.2., and adding new paragraphs B.3, B.4., C.3. and C.4. to Missisquoi National Wildlife Refuge to read as follows:

§ 32.65 Vermont.

* * * * *

Missisquoi National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. All hunters must register at Refuge Headquarters prior to hunting on the refuge.

2. The use of rifles is not permitted on that portion of the refuge lying east of the Mississippi River.

3. Hunting is not permitted from January 1 through August 31.

4. Shotgun hunters will possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

C. Big Game Hunting. * * *

3. All hunters must register at Refuge Headquarters prior to hunting on the refuge.

4. Only portable tree stands are allowed. Unattended tree stands are prohibited.

* * * * *

36. Section 32.66 *Virginia* is amended by adding paragraph A.8 to Chincoteague National Wildlife Refuge to read as follows:

* * * * *

§ 32.66 Virginia.

* * * * *

Chincoteague National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

8. Shotgun hunters will possess and use, while in the field, only nontoxic shot.

* * * * *

37.1 Section 32.67 *Washington* is amended by revising paragraphs A.2 through A.7. inclusive, removing paragraph A.8., revising introductory language of paragraph B., revising paragraphs B.1. and D., and adding paragraphs B.4., B.5., and B.6. to McNary National Wildlife Refuge; by revising paragraphs A.1., A.2., A.3., B., and adding new paragraph A.4. to Toppenish National Wildlife Refuge; and by revising paragraphs A.3., A.4., A.5., introductory language of paragraphs B., B.1., B.3., and D., and removing paragraph A.6. of Umatilla National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

2. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys and other personal property may not be left on the refuge overnight.

3. Hunting is permitted only Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

4. Hunters in the marked hunt site area of the McNary Division must hunt within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

5. Hunters may not possess more than 25 shells while in the field.

6. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

7. The furthest downstream island (Columbia River mile 341–343) in the Hanford Islands Division is closed to hunting.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is not allowed until noon of each hunt day.

* * * * *

4. Hunters may not possess more than 25 shells while in the field.

5. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

6. The furthest downstream island (Columbia River mile 341–343) in the Hanford Islands Division is closed to hunting.

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the McNary Division subject to the following conditions:

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Fishing is permitted from February 1 through September 30.

3. The use of boats and other floatation devices is not permitted.

4. Fishing is permitted only with hook and line.

* * * * *

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys and other personal property may not be left on the refuge overnight.

2. Hunters may not possess more than 25 shells while in the field.

3. Hunters in the marked hunt site areas must hunt within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

4. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

B. Upland Game Hunting. Hunting of pheasant and quail is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is not allowed until noon of each hunt days.

2. Hunters shall possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

3. Hunters may not possess more than 25 shells while in the field.

4. On the first Saturday in December, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

* * * * *

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

3. The refuge is open from 5 a.m. to one and one-half hours after sunset. Decoys, boats, and other personal property may not be left on the refuge overnight.

4. Hunters may not possess more than 25 shells while in the field.

5. Digging or hunting from pit blinds is prohibited.

B. Upland Game Hunting. Hunting of pheasant, chukar, Hungarian partridge, and quail is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds is not allowed until noon of each hunt day.

* * * * *

3. Hunters may not possess more than 25 shells while in the field.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. The refuge is open from 5 a.m. to one and one-half hours after sunset.

2. Fishing is permitted on refuge impoundments and ponds from February 1 through September 30. Other refuge waters (Columbia River and its backwaters) are open in accordance with State regulations.

3. Fishing is permitted only with hook and line.

* * * * *

38. Section 32.68 *West Virginia* is amended by adding new paragraph B.4. to Ohio River Islands National Wildlife Refuge to read as follows:

§ 32.68 West Virginia.

* * * * *

Ohio River Islands National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

4. Hunters will possess and use, while in the field, only nontoxic shot (nontoxic shot regulation to be effective starting with the 1996–97 hunting season).

* * * * *

39. Section 32.69 *Wisconsin* is amended by adding new paragraph B.1. to Horicon National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

* * * * *

Horicon National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Shotgun hunters may use or possess only nontoxic shot while hunting upland game species.

* * * * *

40. Section 32.70 *Wyoming* is amended by revising paragraph B. of Pathfinder National Wildlife Refuge; and by revising paragraph B. of Seedskadee National Wildlife Refuge to read as follows:

§ 32.70 Wyoming.

* * * * *

Pathfinder National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Seedskadee National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Dated: October 20, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–29099 Filed 12–1–95; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 60, No. 232
Monday, December 4, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Docket No. R–0902]

Transactions With Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is proposing to conform the definition of capital stock and surplus for purposes of section 23A of the Federal Reserve Act to the definition of unimpaired capital and unimpaired surplus used in Regulation O and to the definition of capital and surplus used by Office of the Comptroller of the Currency (OCC) in calculating the limit on loans by a national bank to a single borrower. The proposed rule seeks to reduce the burden for member banks and other insured depository institutions monitoring lending to their affiliates.

DATES: Comments must be submitted on or before January 8, 1996.

ADDRESSES: Comments should refer to Docket No. R–0902, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to the Board's mail room in the Eccles Building between 8:45 am and 5:15 pm weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP 500 of the Martin Building between 9 am and 5 pm weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Pamela G. Nardolilli, Senior Attorney (202/452–3289) Legal Division, or Barbara Bouchard, Supervisory Financial Analyst (202/452–3072), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For users of the Telecommunications Device for the Deaf (TDD) only, please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: Section 23A of the Federal Reserve Act, 12 U.S.C. 371c, regulates certain transactions between insured depository institutions and their affiliates, including transactions between affiliated depository institutions. Section 23A is designed to protect insured depository institutions from abuses that may result from lending and asset purchase transactions with their affiliates. In general, section 23A prohibits an insured depository institution from engaging in covered transactions (which include extensions of credit and purchases of assets) with any single affiliate in excess of 10 percent of the institution's capital stock and surplus. A 20 percent aggregate limit is imposed on the total amount of covered transactions by an insured depository institution with all affiliates. Under section 23A, all extensions of credit between an insured depository institution and its affiliate must meet certain collateral requirements. Section 23A also prohibits an insured depository institution from purchasing any low-quality assets from an affiliate, and requires that all transactions with an affiliate must be conducted on terms that are consistent with safe and sound banking practices. Although section 23A, by its terms, applies only to member banks, the Federal Deposit Insurance Act applies section 23A to all nonmember insured banks (12 U.S.C. 1828 (j)) and the Home Owners' Loan Act applies section 23A to savings associations (12 U.S.C. 1468).

Section 23A does not include an explicit definition of ''capital stock and surplus.'' A 1964 Board interpretation refers to the definition of capital as ''the amount of unimpaired common stock plus the amount of preferred stock outstanding and unimpaired'' but explicitly excluded debt-like instruments from the definition of capital and surplus. 12 CFR 250.161. In the interpretation, the Board recognized that certain notes and debentures could be considered as capital or capital stock for purposes of membership in the Federal Reserve System, but concluded that for purposes of certain Federal Reserve Act limitations and requirements, such instruments could not be regarded as part of either capital or capital stock. A subsequent Board interpretation issued in 1971 states that capital stock and surplus, as used in provisions of the Federal Reserve Act, includes reserves for loan losses and valuation reserves for securities. 12 CFR 250.162. As a practical matter, this definition of capital and surplus has been implemented as total equity capital and the allowance for loan and lease losses (ALLL) as set forth in the bank's Report of Condition and Income (Call Report).

Revisions to the Definition of Capital and Surplus

In February 1995, the OCC amended its regulation, 60 FR 8526 (February 15, 1995) (to be codified at 12 CFR 32.2(b)), setting forth lending limits on the amount a national bank may lend to a single counterparty and revised the definition of capital and surplus upon which lending limits are based. In June 1995, the Board amended its Regulation O, 60 FR 31053 (June 13, 1995) (to be codified at 12 CFR 215.2), to revise the definition of unimpaired capital and unimpaired surplus used to limit loans to insiders, to a definition that is consistent with that used for purposes of the OCC's single borrower lending limits to eliminate discrepancies in the definitions of capital used for different lending limit purposes and to reduce regulatory burden for banks monitoring lending to their insiders. Under the revised OCC regulation, capital and surplus is defined as Tier 1 and Tier 2 capital as calculated under the risk-based capital guidelines plus the balance of the allowance for loan and lease losses (ALLL) excluded from Tier 2 capital.[1]

The Board is recommending the adoption of a definition of ''capital stock and surplus'' for purposes of section 23A that is the same as the general capital definitions that are used for Regulation O and the national bank lending limits. Based on June 1995 Call Report data, the revised definition would decrease the limits for

[1] Under the banking agencies' risk-based capital guidelines, Tier 1 capital includes common stock, some noncumulative perpetual preferred stock and related surplus, and minority interest in equity accounts of consolidated subsidiaries. Tier 2 capital includes the ALLL up to 1.25 percent of the bank's weighted risk assets, perpetual preferred stock and related surplus, hybrid capital instruments, and certain subordinated debt.

transactions with affiliates for a majority of banks. Unlike the current capital stock and surplus definition for section 23A, the revised definition would permit banks to include in the calculation of capital stock and surplus, subordinated debt that qualifies for inclusion in Tier 2 capital. On the other hand, unlike equity capital, Tier 1 capital does not include securities revaluation reserves, in particular gains and losses on available-for sale securities, which under Statement of Financial Accounting Standards Number 115 (FAS 115) are considered a component of equity capital. Overall, it is estimated that the revised definition of capital stock and surplus would result in a change for most banks of 5 percent or less from their current limit, although a few community and mid-sized banks would experience substantial changes as a result of their having large gains or losses on available-for-sale securities.

Notwithstanding the decrease for many banks in the amount of capital stock and surplus that would be used to calculate their section 23A limit under the revised definition, the Board believes that, over all, revising the definition would be beneficial for all insured depository institutions for two reasons. First, it would provide consistency in the capital definition used for Regulation O and the national bank lending limits. Second, the revised definition would result in a more stable limit over time than the current definition because it excludes revaluation gains and losses on available-for-sale securities, a component of equity capital that tends to be volatile.

The Board also proposes to amend 12 CFR 250.161 and 12 CFR 250.162 to delete the reference to section 23A to reflect the proposed change.

Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule—are contained in the supplementary information above.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposed rule would apply to all insured depository institutions, regardless of size. The Board has determined that its proposed rule would impose no additional reporting or recordkeeping requirements, and that there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. In addition, the proposed rule is not expected to have a significant economic impact on small institutions. Instead, the proposed rule is expected to relieve the regulatory burden on a majority of insured depository institutions.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.; 5 CFR 1320 Appendix A.1.), the Board reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects in 12 CFR Part 250

Credit, Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 250 as set forth below:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 would continue to read as follows:

Authority: 12 U.S.C. 248(i) and 371c(e).

§ 250.161 [Amended]

2. In § 250.161 paragraph (d) is amended by removing the words ''loans to affiliates (12 U.S.C. 371c),'' in the first sentence.

§ 250.162 [Amended]

3. In § 250.162, paragraph (a) is amended by removing the words ''Loans to affiliates (12 U.S.C. 371c), purchases'' in the first sentence and adding ''Purchases'' in their place.

4. A new § 250.242 is added to read as follows:

§ 250.242 Section 23A of the Federal Reserve Act—definition of capital and surplus.

(a) An insured depository institution's capital stock and surplus for purposes of section 23A of the Federal Reserve Act (12 U.S.C. 371c) is defined as:

(1) An institution's Tier 1 and Tier 2 capital included in the institution's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the institution's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of an institution's allowance for loan and lease losses not included in the institution's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the institution's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3).

(b) *Definitions.* For purposes of this section, the terms *appropriate Federal banking agency* and *insured depository institution* are defined as those terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

By order of the Board of Governors of the Federal Reserve System, November 28, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–29425 Filed 12–1–95; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–58–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require modification of the thrust reverser doors, and replacement of the Collins multifunction display units (MFDU) with new MFDU's. This proposal would also require installation of a placard, for certain airplanes. This proposal is prompted by a report that cracks were found in the flanges of the main hinge fittings of the horizontal stabilizer due to higher than anticipated loads induced during thrust reverser operation. The actions specified by the proposed AD are intended to ensure structural integrity of the horizontal stabilizer by reducing the thrust reverser loads on the horizontal stabilizer.

DATES: Comments must be received by January 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–58–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments

may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; Fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–58–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–58–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that, during full scale fatigue testing of the horizontal and vertical stabilizers, cracks were found in the flanges of the left- and right-hand main hinge fittings of the horizontal stabilizer on a Model F28 Mark 0100 test article. Investigation revealed that such cracking is the result of higher than anticipated loads induced on the tail of the airplane during thrust reverser operation. This condition, if not corrected, could lead to a deteriorated fatigue life of the main hinge fitting structure on the horizontal stabilizer and reduced structural integrity of the horizontal stabilizer.

Fokker has issued Service Bulletin SBF100–78–010, Revision 1, dated April 26, 1994, which describes procedures for modification of the thrust reverser doors. This modification involves installation of extended bumper fittings on the thrust reverser doors. Accomplishment of this modification will reduce the reverse thrust at a given engine pressure ratio by increasing the spillage gap.

Fokker has also issued Service Bulletin SBF100–31–036, dated February 7, 1994, which describes procedures for replacement of the Collins multifunction display units (MFDU) having part number (P/N) 622–8047–412 or 622–8047–422 with new MFDU's having P/N 622–8047–414 or 622–8047–423, respectively. Accomplishment of this replacement will reduce thrust reverser loads on the horizontal stabilizer.

Additionally, Fokker has issued Service Bulletin SBF100–31–038, dated April 26, 1994, which describes procedures for installation of a placard on the main instrument panel, if the replacement of the MFDU is accomplished prior to modification of the thrust reverser door. The placard provides current engine limits for these airplanes.

The RLD classified these service bulletins as mandatory and issued Netherlands airworthiness directive BLA 94–062(A), dated April 29, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the thrust reverser doors. The proposed AD would also require replacement of certain Collins multifunction display units (MFDU) with certain new MFDU's, and installation of a placard, if the replacement of the MFDU is accomplished prior to modification of the thrust reverser door. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 102 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 127 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $19,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,715,240, or $26,620 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 95–NM–58–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11460 inclusive, 11463 through 11469 inclusive, 11471, 11474, 11476, 11478, and 11479; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To ensure structural integrity of the horizontal stabilizer by reducing the thrust reverser loads on the horizontal stabilizer, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD concurrently, except as provided by paragraph (b) of this AD.

(1) Modify the thrust reverser doors in accordance with Fokker Service Bulletin SBF100–78–010, Revision 1, dated April 26, 1994; and

(2) Replace the Collins multifunction display units (MFDU) having part number (P/N) 622–8047–412 or 622–8047–422 with new MFDU's having P/N 622–8047–414 or 622–8047–423, respectively; as applicable; in accordance with Fokker Service Bulletin SBF100–31–036, dated February 7, 1994.

(b) Paragraph (a)(2) of this AD may be accomplished prior to paragraph (a)(1) of this AD provided that a placard is installed on the main instrument panel in accordance with Fokker Service Bulletin SBF100–31–038, dated April 26, 1994, and removed, prior to further flight, after accomplishment of the requirements of paragraph (a)(1) of this AD.

(c) For airplanes that have been modified in accordance with paragraphs (a)(1) and (a)(2) of this AD: No person may install a Grumman Aerospace aft engine cowling having part number 1159P41440 on any airplane unless it has been previously modified in accordance with Fokker Component Service Bulletin P41440–78–02, dated December 17, 1993, as revised by Fokker Component Service Bulletin Change Notification P41440–78–02/001, dated February 25, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 28, 1995.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29443 Filed 12–1–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ACE–13]

Proposed Amendment to Class E Airspace; Webster City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Webster City Municipal Airport, Webster City, IA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) has made the proposal necessary. The intended effect of this proposal is to provide additional controlled airspace for aircraft executing the SIAP at Webster City Municipal Airport.

DATES: Comments must be received on or before January 8, 1996.

ADDRESSES: Send comments on the proposed in triplicate to: Manager, Air Traffic Operations Branch, ACE–530, Federal Aviation Administration, Docket No. 95–ACE–13, 601 East 12th Street, Kansas City, Missouri 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Operations Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816)426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ACE–13.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments

received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for a new Instrument Flight Rules (IFR) procedure at the Webster City Municipal Airport. The additional airspace would segregate aircraft operating under VFR conditions from aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Webster City, IA [Revised]

Webster City Municipal Airport, IA
(lat. 42°26′12″ N., long. 93°52′08″ W)
Webster City NDB
(lat. 42°26′29″ N., long. 93°52′10″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Webster City Municipal Airport and within 2.6 miles each side of the 155° bearing from the Webster City NDB extending from the 6.4-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on November 14, 1995.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 95–29354 Filed 12–1–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No. 951031259–5259–01]

Licensing of Private Remote-Sensing Space Systems

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), NOAA, Commerce.

ACTION: Notice of inquiry and request for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering revisions to its regulations for the licensing of private remote sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.* To promote the process, NOAA is using an informal Task Group, of NOAA and Commerce employees, to compile and consider public comment on the more significant issues involved in the licensing process. NOAA will use these comments to decide the extent to which it needs to revise its regulations and what issues should be addressed. Should NOAA decide that new regulations are necessary a proposed rule would be published to solicit public comment. NOAA will then circulate its final draft of proposed regulations in the informal rulemaking process. NOAA intends that soliciting comments on the issues proposed in this notice prior to the issuance of any proposed rule will ensure that NOAA's regulations include provisions advantageous to industry, as well as to Government. This Notice solicits such comments, particularly from the regulated industry.

DATES: Comments must be received on or before February 2, 1996.

ADDRESSES: Comments should be sent to, Michael Mignogno, NOAA, National Environmental Satellite, Data, and Information Service, Federal Building 4, Room 3301–E, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT: Michael Mignogno at (301) 457–5210 or Catherine Shea, NOAA, Office of General Counsel at (301) 713–0053. Additional Discussion Packages are available from Michael Mignogno at the above address.

SUPPLEMENTARY INFORMATION: In 1987, NOAA published its licensing regulations that set forth procedures for submission and Government review of an application pursuant to the Land Remote Sensing Commercialization Act of 1984. Only one license was issued

under this act. When Congress passed the Land Remote Sensing Policy Act of 1992 (the Act), it made several revisions to the licensing process to stimulate commercial interest in operating systems. On March 10, 1994, the President issued his policy to promote U.S. competitiveness in remote sensing space capabilities while protecting U.S. national security and foreign policy interests. Since 1993, NOAA has issued nine licenses.

NOAA is considering updating its 1987 regulations to reflect statutory changes, intervening events, and recent licensing experiences and to ensure that the Government's oversight is simple, transparent, and predictable. Particularly, NOAA seeks to support the President's policy that long term U.S. national security and foreign policy interests are best served by ensuring the U.S. industry continues to lead this emerging market.

In order to foster the policy of transparency in the licensing process, NOAA is seeking public input on whether extensive new regulations are necessary and, if so, what issues should be addressed in such rule. To assist this process, NOAA developed, for the Task Group, a series of Discussion Packages that highlight some of the more significant areas for discussion. NOAA is seeking early public input on these and on other significant aspects of the licensing process. NOAA is especially interested in suggestions for innovative methods to carry out its statutory licensing responsibilities in ways that enhance U.S. competitiveness. The significant issues identified to date and highlighted in the discussion packages can be summarized as follows:

1. Review Procedures for License Applications

A. How can the process be improved and modified to provide greater transparency and predictability and shorter response time?

NOAA seeks to eliminate uncertainty from the licensing process that could potentially threaten commercial practices while preserving essential national security and foreign policy interests. For each new system, these interests are first addressed during the review of the license application. The review must be thorough and careful, but at the same time transparent, predictable, and timely so as not to deter pursuit of and investment in potential systems. The Government must complete its review within the statutory time limit of 120 days or, if possible, within a shorter time limit.

To address these legitimate interests and comply with the intent of the Act and the President's policy, NOAA is considering whether the Government should institute more formal administrative time limits and more detailed record keeping requirements in making determinations on a license application. It is contemplated that under such a system any reviewing agency unable to comply with a time limit would be required to submit a satisfactory explanation and specify the additional time required. The administrative record would be opened as soon as an application is received and would include all comments on that application. *Ex parte* communications would not be permitted and oral input should not influence the process in any way. The applicant would have the right to inspect this record during business hours.

To promote timely and transparent decisions NOAA is considering additional procedures pursuant to its enforcement authority under section 203 of the Act. This section establishes the right to a hearing on the record in the event NOAA takes certain adverse actions such as the denial of a license or imposition of conditions in a license. NOAA is considering defining adverse actions to include the Government's failure to act within the applicable time limit and/or advise the applicant of the reasons for the delay.

In the event of an appeal, the administrative record would stand alone as evidence for all determinations made during the application review. NOAA would have to demonstrate that a preponderance of the evidence in this record establishes, for example, that the system proposed would compromise identified national security or foreign policy interests. As such, the record would have to include information from the appropriate secretary sufficient to identify the interest at risk and describe why the proposed system would not preserve that interest. (This information may be classified where necessary). Should NOAA establish such an appeal process, the record would have to contain this information and the evidence would have to be sufficient to meet the requisite test or the agency determination would not prevail.

B. What are the minimum informational requirements for a complete application?

A related issue in terms of ensuring expeditious review is determining when an application is considered complete. It is important that applicants and the Government agree on what basic information must be provided in order to enable the Government to perform a thorough review and, at the same time, avoid over-burdening the applicant. Such an understanding also will avoid frequent requests for additional information which delay the process. Particularly important is the information that describes the operational aspects of a proposed system which are significant in terms of its national security and foreign policy implications. NOAA is interested in assessing what information is necessary before a review can begin and what level of burden is imposed by gathering the information necessary for a complete application. Any comments received on this issue also will be relevant in terms of compliance with the Paperwork Reduction Act.

The existing informational requirements are found at 15 CFR 960.6. A more complete list, that includes additional items identified as significant by the reviewing agencies during recent license application reviews, is contained in Discussion Package 1. This Discussion Package also sets forth in more detail the type of process that NOAA is considering for reviewing license applications.

2. Restricting Imaging To Preserve National Security/Foreign Policy Interests—What Standard Must Be Applied and What Procedures Must Be Followed?

Once a license is issued and a remote sensing satellite is operational, the most critical issue for the licensee is when the Government might restrict imaging of a particular area and for how long because of national security or foreign policy considerations.

The basic license condition, derived from the President's policy, provides:

> The Secretary of Commerce may, after consulting with the Secretary of Defense or State, as appropriate, require the licensee to limit imaging an area and/or limit distributing data from an area during any period when national security or foreign policy interests may be compromised.

To ensure that restrictions will be invoked only where appropriate, this consultation and any decision to implement this condition will be controlled at the Secretarial level and any Secretarial disagreement will be elevated to the Presidential level.

While the above standard and process appears to have achieved considerable consensus, questions have been raised whether such a standard is too vague. For example, representatives of the media addressed this issue in the 1989 Petition for Rulemaking. The media representatives have maintained that imaging could be restricted only if ''there is clear evidence that such action is necessary to prevent serious and immediate injury to distinct and

compelling national security and foreign policy interests of the United States.'' (Petition for Rulemaking filed by Radio Television News Directors Association, April 5, 1988)

In 1989, NOAA responded to this Petition for Rulemaking announcing that it would reopen its regulations and would incorporate the principle that ''conditions imposed in a license will be the least burdensome possible.'' 54 FR 1945. This rulemaking was interrupted by passage of the Act in 1992 and NOAA is now considering a number of provisions to implement the President's policy. These could include ensuring that limitations on imaging would be imposed only over the smallest area and for the shortest period of time possible and would not be imposed at all if comparable data is otherwise available.

Ultimately, any standard and process for making decisions concerning the need for restrictions on imaging must ensure that the Government has the ability to protect its national security and international obligation interests adequately while preserving First Amendment rights and other U.S. interests, including that of protecting industry's position in global competition. NOAA believes that it is now an appropriate time for a full discussion of this issue before systems become operational. Comments from previous rulemaking actions and other relevant material are contained in Discussion Package 2.

3. Review of Foreign Agreements

Section 202(b)(6) of the Act requires that licensees ''notify the Secretary [of Commerce] of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations, or entities.'' To implement this section, NOAA's licenses now require licensees to provide notice of a significant or substantial foreign agreement at least 60 days before conclusion. This requirement reflects interagency consensus that sixty days is needed for meaningful notification but that, consistent with the President's policy, this burden is justified only if agreements are significant or substantial. As required by the President's policy, NOAA anticipates defining such agreements in these regulations and solicits comments on this issue (as well as the appropriateness of the 60 day review period).

This provision of the Act is subject to differing legal opinions. One view of the Act is that it requires that licensees notify the Secretary of *every* agreement. The Department of Commerce disagrees with this interpretation. Legislation has been introduced on this subject; however, to date no subsequent legislative action has occurred.

Should NOAA's legal interpretation not be upheld and no legislation be passed, comments might want to address whether NOAA should consider defining different classes of agreements with corresponding notification requirements. For example, the regulations could retain a 60 day notice requirement for significant or substantial agreements while requiring that notice of other agreements be provided only prior to their effective date.

A. What agreements must be submitted for review?

The threshold question with respect to the notification requirement of section 202(b)(6) of the Act is what agreements are covered. The purpose of such notification is to ensure continued preservation of U.S. national security and foreign policy interests. Existing licenses require notification of those types of agreements that could have particular national security or foreign policy implications such as: those that give a foreign party control over the operation of the system, e.g., the ability to operate the spacecraft, task the sensors, or exercise managerial control; and those that provide for a significant role in distributing the data from the system, e.g., by operating a foreign ground station.

Routine data sales have traditionally been excluded from the definition of significant agreement because an advance notice requirement would put U.S. companies at a competitive disadvantage. Furthermore, scrutinizing all direct sales to foreign customers would not effectively preserve U.S. interests inasmuch as a determined buyer could purchase any scene or scenes desired through a variety of legal channels.

More specifically, existing licenses require notice of the following types of foreign agreements:

(1) cooperation in the launch and/or operation of the spacecraft;

(2) Tasking of the satellite sensors, modifying satellite tasking commands, revising the priority of tasking requests, or otherwise providing an opportunity to exercise managerial control over the system's operation;

(3) Real-time direct access to unenhanced data; or

(4) Distributorship arrangements involving the receipt of high volumes of unenhanced data;

(5) An equity interest in the Licensee. (A license amendment is required if the aggregate equity interest in the Licensee by foreign nations and/or persons exceeds or will exceed 25 percent.)

These licenses exclude agreements that provide only for the sale of data or value added products, or for the establishment of marketing outlets in foreign countries established in the ordinary course of business if described in the plan for sale and distribution contained in the license application.

NOAA seeks comment on whether the above criteria are adequate to define ''significant or substantial'' agreements. In particular, NOAA is searching for appropriate criteria to determine when review is necessary for agreements providing solely for foreign investment in a licensee. Every sale of stock to a foreign investor cannot be subject to review. On the other hand, a threshold for review is necessary to ensure that the technology remains secure and that the operator remains sufficiently under U.S. ownership or control that it must respond appropriately when necessary to preserve national security. Furthermore, in accordance with the President's policy, aggregate foreign investment in excess of a particular amount would not only be subject to notification but to approval, i.e., by amendment to the license. NOAA is particularly interested in industry views about what criteria should trigger a review of a foreign investment agreement.

B. What process should be in place to inform applicants when the Government has identified a concern with a potential foreign agreement? When the Government raises a concern and issues negative advice, what rights of appeal should be available to an applicant or licensee?

To promote more timely and transparent decisions on the review of significant foreign agreements NOAA is considering a process that would be similar to the review of an initial license application in that the Government would institute more formal administrative time limits and more detailed record keeping requirements. However, this process would recognize that, unlike the case of an initial application, the Secretary does not have the legal authority to approve or disapprove these agreements. Therefore, if the Secretary does not advise a licensee of any conflicts within sixty days of notification, the licensee is free to enter into the agreement.

A possible process to be considered and on which NOAA seeks comments is as follows: If the Secretary does advise a licensee of a conflict, i.e., that the proposed agreement will compromise national security or foreign policy interests, the licensee may at that point

request a hearing on the record to determine whether a preponderance of the evidence in the record supports that conclusion. In circumstances where waiting for the normal hearing process could jeopardize relations among parties to the agreement, NOAA would provide an expedited hearing process.

Discussion Package 3 sets forth in more detail the type of process under consideration.

6. Miscellaneous

Comments on the above issues are specifically solicited but all comments on improving and simplifying the regulations are welcome and will be reviewed and considered in the course of the normal agency process of issuing proposed regulations, should such regulations be deemed necessary. NOAA is also interested in comments on whether or not NOAA should sponsor a public meeting on the issues presented in this notice or others related to the regulations.

NOAA intends that all information obtained from the public in connection with this Notice be a matter of public record. Consequently, comments must be in writing to be considered. Oral comments are discouraged. NOAA will not accept submissions made on a confidential basis. The record containing all comments will be maintained with the above listed contacts, NOAA, Federal Building 4, Room 3301, Suitland, MD. From 9 a.m. to 3 p.m., it may be inspected, by appointment, and any comments copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Further information about inspection and copying of records at this facility may be obtained from the above contacts.

Commentors can request copies of the Discussion Packages referenced in this document from the contacts listed above.

Robert S. Winokur,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 95–29330 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–12–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 95–7]

Registration of Claims to Copyright, Group Registration of Photographs

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed regulations with request for comments.

SUMMARY: The Copyright Office of the Library of Congress is proposing regulations that permit group registration of unpublished or published photographs without the deposit of copies of the works. These proposed regulations would enable photographers and photography businesses to seek the benefits of registration by making it less burdensome for them to register a claim to copyright in a large number of photographs taken by a single photographer or photography business. The Office seeks comment on the proposed regulations.

DATES: Comments on the proposed regulation should be in writing and received on or before January 18, 1996. Reply comments should be received February 2, 1996.

ADDRESSES: If sent BY MAIL, fifteen copies of written comments should be addressed to Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366. If BY HAND, fifteen copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–407, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Telephone: (202) 707–8380 or Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: Section 408 of 17 U.S.C. provides that a copyright owner may obtain registration of a copyright claim by delivering to the Copyright Office a deposit, an application and a fee. With respect to the deposit, the nature of the copy to be deposited is set out in general terms, e.g., one complete copy of an unpublished work. However, broad authority is granted to the Register to provide for alternative forms of deposit. Section 408(c)(1) provides that the Register may require or permit the deposit of identifying material in lieu of an actual copy of the work. Congress' intent is reflected in the various legislative reports that accompanied the enactment of the copyright law. Congress instructed the Office to keep the deposit provisions flexible ''so that there will be no obligation to make deposit where it serves no purpose, so that only one copy or phonorecord may be deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases.'' H.R. Rep. No. 1476, 94th Cong., 2d Sess. 151 (1976); S. Rep. No. 473, 94th Cong., 1st Sess. 134 (1975). The law also authorizes the Register to require or permit ''a single registration of a group of related works.''

Registration can be made at any time. Section 412 of 17 U.S.C. prohibits the awarding of statutory damages and attorney's fees where the work has not keen registered before an infringement occurs. [1] Although actual damages as well as injunctions are always available remedies, the Copyright Office recognizes the significant benefits of early registration.

Registration Concerns Raised by Photographers

During the congressional hearings on the Copyright Reform Act of 1993, photographers complained that they were unable to take advantage of the benefits of registration because the Copyright Office practices were exceedingly burdensome. Photographers stated that it required a tremendous amount of time and effort to submit a copy of each image included in a collection and was financially burdensome. Prior to 1993, the Office revised its practices in an attempt to make registration easier for photographers. However, a copy of each image continued to be required. These changes did not sufficiently ease the burdens, and few photographers have registered their works. Consequently, photographers urge that they have been given a clear legal right by the copyright law, but no effective remedy; and this reality encourages infringers to continue unlawful conduct. *See*, Copyright Reform Act of 1993: Hearings on H.R. 897 Before the Subcomm. on Intellectual Property and Judicial Administration of the House Comm. on the Judiciary, 103d Cong., 1st Sess. 370 (1993). *See also* Copyright Reform Act of 1993: Hearing on S. 373 Before the Subcomm. on Patents, Copyrights and Trademarks of the Senate Comm. on the Judiciary, 103d Cong., 1st Sess. 169 (1993). (Testimony of Andrew Foster, Executive Director of the Professional Photographers of America, Inc.)

In June 1993, the Librarian of Congress appointed an Advisory Committee on Registration and Deposit (ACCORD). That Committee recommended that the Copyright Office ''greatly expand the use of group registration and optional deposit to reduce the present burdens'' and ''consult more actively and frequently with present and potential registrants to

[1] A three month grace period, measured from the date of first publication, is provided for published works.

hear their problems and to respond to them whenever possible.'' Library of Congress, Advisory Committee on Copyright Registration and Deposit 31 (1993).

For the past year the Office has met with photographers and their representatives who have urged that the nature of photography, where thousands of images may be created with only a few, if any, being published makes registration difficult. At the time registration may be sought, the photographer does not know which photographs, if any, will be published. The definition of publication was also cited as problematic; in many cases it is unclear whether a photograph has been published. Even when it is clear that a photograph has been published, the photographer may be unaware of the publication. Finally, photographers and their representatives noted that often the film is turned over to the photographer's client for processing and use, thus leaving the photographer with nothing to deposit with the Copyright Office.

Photographs are generally copyrightable; an individual selects a camera, lens, film, and an image to capture taking into consideration choices such as lighting and composition. Since photographs are usually entirely new works, for examination purposes there is no issue with respect to whether or not a photograph is copyrightable. Therefore, it is possible to consider registration without an actual deposit of the work. Moreover, in the past the Library of Congress has not relied on the copyright registration system as a source for its photography collections. This is not the case with works such as music, motion pictures, plays, poems, choreography or novels. If the Library depended on the copyright deposits for its photograph collections, the Copyright Office would not be able to consider registration without a deposit of a copy of the work. In proposing this regulation, the Office is not waiving the Library's rights to receive photographs that are registered. The Library may select from five to ten photographs from each registered group of photographs.

Recognizing the difficulties that photographers face in registering their works and desiring to ameliorate these problems, the Office is seeking a workable solution for photographers which does not cause unforeseen problems for publishers, photofinishers and other users of photographs. To this end, under the authority granted in 17 U.S.C. 408(c)(1), the Office is proposing regulations that permit a single registration for a group of unpublished and published related works and also permit registration with identifying material in place of actual photographs.

We believe that those who use photographs should not be adversely affected. The Office already will register a claim in an unlimited number of photographs as an unpublished collection; that collection would bear only a collective title, and the deposit would consist of contact sheets or a videotape. There would be no individual identifiers for individual images contained in the collection.

Guidelines for Group Registration of Photographs

The proposed regulations permit group registration of unpublished and published photographs on a single application with a fee of $40, and a deposit of identifying material, if certain conditions are met. The conditions are that the photographs must be by a single author, be owned by the same copyright claimant (who need not be the author), be created on or after March 1, 1989, be created during a single calendar year, and bear a title which identifies the group as a whole. Published works whose exact date of publication is known may be included in a collection as long as the dates of publication do not exceed a three month period. For example, in one collection a photographer may include both unpublished photographs created in 1995, and photographs that are known to have been published between March 1, 1995, and May 31, 1995.

The approximate number of photographs in the group must be indicated on the application and in the identifying material; where the collection contains clearly published works, the approximate number of such photographs must be included in the identifying material. Where a group contains both unpublished and published photographs, the Copyright Office will assign a registration number, VAu (for unpublished works) or VA (for published works) based on the preponderant status of the photographs as indicated in the identifying material.

Identifying Material

The identifying material must contain the following information: name of the author; the name and address of the claimant; the title given to the group as a whole; the approximate number of photographs included in the group, and, if the group includes photographs known to be published, an approximate number of the works that have been published. It must also contain the range of dates (month, year) during which the photographs were created (taken)—i.e., the earliest and the latest; the range of dates of first publication (month, day, year) for those photographs that have been published; a general description of the subject matter captured by the photographs; where more than one subject is included, a general description of each, with particular emphasis on newsworthy subjects, e.g., bombing of Federal Building in Oklahoma City, April 1995; ghost towns of Arizona; Million Man March in Washington, D.C., October 1995. The identifying material must include the name of the person to contact about using the work if that information is not already given.

It may also contain any additional identifiers, such as an identification coding that is used to administer rights. Since the deposit will not be a copy of each photograph and a question could arise as to whether or not a particular photograph has been registered, it is in the claimant's best interest to include as much information as possible to describe the photographs covered by the registration.

Other Group Registration Possibilities

The Office already permits or requires a single registration for a number of works. These include the following: contributions to periodicals by the same author who is an individual (not an employee for hire) which are published in a twelve month period. For this, a basic application, for example Form VA for photographs, must be submitted with an adjunct application, Form GR/CP. All component parts of a multipart work that are owned by the same claimant and that are part of the unit of publication should be registered together on a single application. A single registration may be made for all categories of unpublished works as unpublished collections if certain conditions are met. The deposit must contain the entire copyrightable content of each work included in the collection. 37 CFR 202.20

Separate Registration for an Individual Photograph

Individual photographs may be separately registered. To make a separate registration for an individual photograph, an applicant should submit a Form VA, a fee of $20, and a copy of the photograph which complies with the existing deposit requirements found at 37 CFR 202.20.

Selection of Archival Prints for the Collections for the Library of Congress

One of the conditions of this proposed group registration procedure is that the Library of Congress be able to select between five to ten photographs from

each registration for its collections. Within six months of registration, the Library of Congress will determine whether it wishes to consider certain photographs for its collections. Generally, the Library is interested in photographs covering newsworthy events by specific photographers, and it does not anticipate making a large number of requests for samples or archival quality prints.

Submission of Sample, if Requested

In order for the Library of Congress to determine whether it wishes to make a selection, it will need to examine a sample of the photographs included in the registration. The Library will first review the application and identifying material which identify the photographs included in the group registration. The Library may then request that the photographer or photography business send a sample of from fifty to one hundred images of the photographs in the format that is the least expensive, but will still facilitate the Library's selection process, *e.g.*, slides, contact prints in black and white or in color, or good quality photocopies in black or white. For registrations of up to five thousand photographs, fifty images may be requested as a sample; for registrations of over five thousand photographs, another ten images may be requested for each additional one thousand photographs covered in the registration. A maximum of one hundred images may be requested for registrations covering over ten thousand photographs.

Deposit of Archival Quality Photographs

After reviewing the sample, the Library of Congress may request from five to ten archival quality photographs, depending on the number of photographs included in the group registration. The Library's guidelines for deposit of photographs are included in the new proposed Copyright Office regulation found at 37 CFR 202.20(c)(2)(xx).

The number of photographs that the Library may select depends on the number of photographs covered in one group registration. For any group registration of up to five thousand photographs, the Library may select five photographs for its collections; for each additional one thousand photographs included in a group registration up to ten thousand, the Library may select another photograph. For any group over ten thousand, the deposit would remain ten, archival quality photographs.

Effective Date

The proposed regulations permitting group registration of photographs will be effective upon publication of an interim or final rule. They may be used to register photographs created on or after March 1, 1989, the effective date of the Berne Convention Implementation Act of 1988. Prior to March 1, 1989, the copyright law required that a copyright notice be placed on all copies of published works; however, for works published after that date, use of the notice is optional. Therefore, these regulations cover only photographs where the use of a copyright notice is not an issue.

Further Public Comment

The Office has met with various parties, and has been made aware both of certain concerns and also the guidelines agreed upon by The Board of Directors of the American Society of Media Photographers, the Professional Photographers of America, Photo Marketing Association International, the Association of Professional Color Laboratories, the Professional School Photographers Association International and the Coalition for Consumers' Picture Rights. One of that group's agreements is to work to eliminate the 17 U.S.C. 412 requirement as a precondition for statutory damages and attorneys fees for photographers. The Office takes no position on this particular proposal but observes that photographers need real relief now; we believe the proposed rule offers that relief.

The Copyright Office seeks comment on these proposed rules. Following review of all comments, the Office will adopt interim or final regulations. The Copyright Office is interested in receiving information based on actual experience, if possible, including answers to the following questions.

1. How have courts dealt with deposits consisting of only identifying material rather than a complete copy of the work?

2. Have such registrations been accorded prima facie evidentiary effect with respect to copyrightability as well as to the facts in the certificate?

3. How would the problems of photographs registered under this regulation differ from those of other registered collections, e.g., in collections where there are no individual identifiers for the works but the Copyright Office has a copy of each work included in the collection?

4. How does this proposed group registration differ from a group registration for a database covering a three month period of time where the deposit consists of only a small sample of the copyrightable authorship from a representative day?

5. What problems would be caused by registrations made under these proposed regulations that include both unpublished and published works?

6. Will inclusion of information about the agent or licensing entity be helpful?

7. What might be the abuses, if any?

8. Is the Office proposing too many photographs to be registered on one application? If yes, what number would be more appropriate?

9. Are there other identifiers that could assist in identifying the registered works?

Conforming Amendments

The Copyright Office also is proposing to amend 37 CFR 202.3(b)(3)(ii) and footnote 6 to 37 CFR 202.3(c)(2) to conform to the addition of new 37 CFR 202.3(b)(9).

List of Subjects in 37 CFR Part 202

Claims, Copyright.

Proposed Rule

In consideration of the foregoing, the Copyright Office proposes to amend 37 CFR part 202 in the manner set forth below:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 is revised to read as follows:

Authority: 17 U.S.C. 408 and 702.

§ 202.3 [Amended]

2. Section 202.3(b)(3)(ii) is amended by removing ''(b)(8)'' and adding ''(b)(9).''

3. In § 202.3, paragraph (b)(9) is redesignated as paragraph (b)(10) and a new paragraph (b)(9) is added to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(9) Group registration of photographs.

(i) Pursuant to the authority granted by 17 U.S.C. 408(c)(1), and without waiving any rights of the Library of Congress to review and acquire copies of individual photographs, the Register of Copyrights has determined that, on the basis of a single application, and a single filing fee of $40, a single registration may be made for a group of photographs, if the following conditions are met:

(A) The group bears a single title identifying the group as a whole;

(B) All of the photographs were created by the same author;

(C) All of the photographs have the same copyright claimant;

(D) All of the photographs were created on or after March 1, 1989;

(E) All of the photographs were created, and if published, were both created and published during the same year; and

(F) All photographs known to be published were published within a three month span, *e.g.*, from January 1–March 31, from February 1–April 30.

(ii) Identifying material must consist of:

(A) The name of the author;

(B) The name and address of the claimant;

(C) The title given to the group as a whole;

(D) The approximate number of photographs included in the group;

(E) If the group includes published photographs, an approximate number of the works that have been published;

(F) The range of dates (month, year) during which the photographs were created (taken)—*i.e.*, the earliest and the latest;

(G) The range of dates of first publication (month, day, year) for those photographs that have been published;

(H) A general description of the subject matter captured by the photographs; where more than one subject is included, a general description of each, with particular emphasis on newsworthy subjects, for example, ''Bombing of Federal Building in Oklahoma City, April, 1995;'' ''Ghost Towns of Arizona;'' ''Million Man March in Washington, D.C., October, 1995;'' and

(I) The identifying material may also contain any additional identifiers, for example, the identification coding that is used to administer rights in the photographs.

(iii) The application for group registration must include:

(A) At line 1 of the VA form, a title that identifies the group as a whole;

(B) Following the title at line 1, the approximate number of photographs included in the group;

(C) Where all the published works included in the group were published on the same day, the exact date of first publication; alternatively, the span of time during which all the published works were first published, *e.g.*, June 1, 1995 through August 31, 1995; and

(D) If the claimant listed in space 4 is not the agent or licensing entity for all or some of the photographs in the group, the name, addresses, telephone and fax numbers of such person or entity. Space 4 should state ''Licensing Information,'' followed by the name, *etc.*

(iv) If the Library of Congress wishes to review a collection for possible inclusion of photographs in its collection, the claimant of record must supply the appropriate material.

(A) The Library may request a maximum of fifty sample images for the first five thousand photographs covered by one group registration, and ten more sample images for each additional one thousand photographs covered, with a maximum of one hundred images for a group registration covering more than ten thousand or more photographs.

(B) The Library may then select between five and ten specified photographs to be supplied in prints from each group registration. For registrations of fewer than five thousand photographs, no more than five photographs may be selected, and for registrations of ten thousand or more, no more than ten photographs may be selected.

(C) When photographs from a requested sample have been selected, the photographer or photography business must provide archival quality copies of the selected photographs, meeting Library guidelines in accordance with the deposit requirements of § 202.20(c)(2)(xx).

(D) If any photographer or photography business registering photographs under this regulation does not provide the required samples and archival quality copies as requested by the Library, the Copyright Office may rescind that party's privilege of making further group registrations under this section.

(v) The fee is $40.

4. Footnote 6 to § 202.3(c)(2) is revised to read as follows:

[6] In the case of applications for group registration of newspapers, contributions to periodicals, newsletters, and photographs, under paragraphs (b)(6), (b)(7), (b)(8) and (b)(9) of this section, the deposits and fees shall comply with those specified in the respective paragraphs.

5. Section 202.20 is amended by adding a new paragraph (c)(2)(xx) to read as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(c) * * *

(2) * * *

(xx) *Group registration of photographs.* For group photographs registered under § 202.3(b)(9), works selected for acquisition by the Library of Congress must consist of prints that:

(A) Measure at least 8″×10″ and do not exceed 20″×24″;

(B) Are made on fiber-based paper and archivally processed;

(C) Are not mounted in any way; and

(D) Are marked as follows:

Titles or caption information may be written lightly on the back of photographs with a #1 soft lead pencil or (preferably) supplied on a separate sheet of paper and keyed to the prints. Archival ink, supplied by the Library, may be used on the back of the print, if desired, for copyright stamps and photographer identification. Adhesive labels, pressure-sensitive tapes, and ballpoint ink should never be applied to the backs of the photographs. Photographs should be mailed flat between two sturdy pieces of cardboard.

§ 202.21 [Amended]

6. In § 202.21(a), remove ''and (g)'' and add '', (g) and (i).''

7. In § 202.21, add a new paragraph (i) to read as follows:

§ 202.21 Deposit of identifying material instead of copies.

* * * * *

(i) For purposes of group registration of photographs under § 202.3(b)(9), identifying material may consist of titles, descriptions, or lists identifying the photographs included in the registration.

Dated: November 22, 1995.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–29293 Filed 12–1–95; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–171; RM–8724]

Radio Broadcasting Services; Jackson, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Roy E. Henderson d/b/a Mountain Broadcasting Co., proposing the allotment of Channel 227C at Jackson, Wyoming, as the community's third local commercial FM transmission service. Channel 227C can be allotted to Jackson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at center city coordinates. The coordinates for Channel 227C at Jackson are North

Latitude 43–28–42 and West Longitude 110–45–42.

DATES: Comments must be filed on or before January 16, 1996 and reply comments on or before January 31, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Ave., NW., Suite 900, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–171, adopted November 3, 1995, and released November 24, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–29369 Filed 12–1–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–169, RM–8722]

Radio Broadcasting Services; Machias, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dr. James Whalen proposing the allotment of Channel 266B to Machias, Maine, as that community's second FM broadcast service. Canadian concurrence will be requested for the alotment of Channel 266B at coordinates 44–45–22 and 67–36–50. There is a site restriction 12.8 kilometers (7.9 miles) west of the community.

DATES: Comments must be filed on or before January 8, 1996, and reply comments on or before January 23, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John C. Dodge, Cole, Raywid & Braverman, 1919 Pennsylvania Ave., NW., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–169, adopted October 31, 1995, and released November 15, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–29370 Filed 12–1–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–93; Notice 01]

RIN 2127–AF76

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: NHTSA is considering issuing a proposal to amend the Federal motor vehicle safety standard on accelerator control systems. The standard was last revised in 1973, when only mechanical systems were common on motor vehicles. In order to determine whether to propose amending the standard to include requirements specifically tailored for electronic accelerator control systems and to clarify possibly ambiguous language, NHTSA poses a series of questions in this document. NHTSA undertakes this action as part of its effort to implement the President's Regulatory Reinvention Initiative to make regulations easier to understand and to apply.

DATES: Comments must be received on or before February 2, 1996.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590. It is requested, but not required, that 10 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Patrick Boyd, Office of Vehicle Safety Standards, Office of Safety Performance Standards, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590. Mr. Boyd's telephone number is (202) 366–6346, and his FAX number is (202) 366–4329.

For legal issues: Ms. Dorothy Nakama, Rulemaking Division, Office of Chief

Counsel, NHTSA, 400 Seventh Street SW., Washington, D.C. 20590. Ms. Nakama's telephone number is (202) 366–2992, and her FAX number is (202) 366–3820. Please note that written comments should be sent to the Docket Section rather than faxed to the above contact persons.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

Pursuant to the March 4, 1995 directive ''Regulatory Reinvention Initiative'' from the President to the heads of departments and agencies, NHTSA undertook a review of its regulations and directives. During the course of this review, the agency identified rules that it could propose to eliminate as unnecessary or to amend to improve their comprehensibility, application or appropriateness. As described below, NHTSA has identified Federal Motor Vehicle Safety Standard (FMVSS) No. 124, *Accelerator control systems,* as one rule that may benefit from amendments.

Background of Standard No. 124

Standard No. 124's purpose is to reduce deaths and injuries resulting from loss of control of a moving vehicle's engine, due to malfunctions in the vehicle's accelerator control system. Since 1972, Standard No. 124 has specified requirements for ensuring the return of a vehicle's throttle to the idle position under each of the following two circumstances, (1) when the driver removes the actuating force (typically, the driver's foot or cruise control) from the accelerator control, and (2) when there is a severance or disconnection in the accelerator control system. Standard No. 124 applies to passenger cars, multipurpose passenger vehicles, trucks, and buses.

Paragraph S5.1 of Standard No. 124 requires that, under any load condition, and within the time specified in S5.3, the throttle must return to the idle position from any accelerator position or any speed of which the engine is capable, whenever the driver removes the actuating force. The standard defines the throttle as ''the component of the fuel metering device that connects to the driver-operated accelerator control system and that by input from the driver-operated accelerator control system controls the engine speed.''

Standard No. 124 has two further requirements to provide safety in the event of accelerator control failure. The first, specified at S5.1, requires ''at least two sources of energy,'' each capable of returning the throttle to idle position within the time limit for normal operation, from any accelerator position or speed whenever the driver removes the opposing actuating force. The second, specified at S5.2, requires that the throttle return to idle ''whenever any one component of the accelerator control system is disconnected or severed at a single point'' and the driver releases the pedal.

Paragraph S5.3 requires that the throttle return to idle within 1 second for vehicles of 10,000 pounds or less gross vehicle weight rating (GVWR) and within 2 seconds for vehicles with a GVWR greater than 10,000. The maximum allowable time is increased to 3 seconds for any vehicle that is exposed to ambient air at O degrees to −40 degrees F. during the test or for any portion of a 12 hour conditioning period.

Standard No. 124 Applies to Electronic Accelerator Control Systems

When promulgated, the definitions and requirements of Standard No. 124 were easy to understand and apply because their language was strongly influenced by the design of mechanical accelerator control systems and because all control systems were mechanical then. The ''throttle'' of a gasoline engine was the carburetor shaft that opened and closed the air passages in the base plate. The ''throttle'' of a diesel engine was the control rod, or rack that controlled fuel flow to the high pressure injectors. The two energy sources were simply two return springs acting on the linkages and/or cables between the accelerator pedal and the throttle. If at least one of those springs was connected directly to the carburetor or to the diesel fuel injection rack, it would cause the throttle to return to idle in the event of a disconnection of the linkage. And, if the single contemplated failure occurred at one spring, the other would permit continued driver control.

Subsequent to the promulgation of Standard No. 124, electronic accelerator controls with on-board computer systems were introduced on motor vehicles. Their use is steadily increasing, especially in heavy trucks.

The introduction of electronic systems led to questions about their status and treatment under the Standard. Stating that some of the language in Standard No. 124 seemed more appropriate for mechanical accelerator control systems than for electronic ones, Isuzu Motors America, Inc., asked the agency a variety of questions concerning electronic systems. Its central question was whether the Standard applies to electronic systems. In an August 8, 1988 interpretation letter to Isuzu, NHTSA stated that the Standard does apply to electronic accelerator control systems. Among its other questions, Isuzu asked whether a severance in electric wires in its electronic accelerator control system is a severance within the meaning of S5.2 of Standard No. 124. Isuzu expressed its belief that because the electric wires were not a ''moving part,'' the answer should be ''no.'' NHTSA disagreed.

It interpreted Standard No. 124's requirement that the throttle return to idle ''whenever any one component of the accelerator control system is disconnected or severed at a single point,'' to include all severances or disconnections of any component of the accelerator control system as within the standard, not just disconnections of moving parts.

Need To Amend Standard No. 124

Most accelerator linkages on the largest classes of trucks (i.e., those over 33,001 lbs. GVWR) are now electronic. A mechanical accelerator linkage controlling a fuel rack (i.e., a device that controls fuel flow to the high pressure injectors) is now rare on the largest classes of trucks. Most of today's heavy diesel trucks have no mechanical connection between the accelerator pedal and the throttle.

Although the agency has been issuing interpretations about the Standard's application to electronic accelerator control systems for the last seven years, the flow of interpretation requests remains unabated. Manufacturers continue to ask the basic question of whether the Standard applies to electronic accelerator control systems. One correspondent presumed that since those systems do not include springs and linkages, as described in Standard No. 124, electronic accelerator controls are not regulated. Another asked for a legal interpretation of ''throttle,'' as applied to electronic accelerator control systems. Other correspondents have understood Standard No. 124 to mean simply that two return springs should be placed on the treadle assembly. In response, the agency has recited in its interpretation letters the requirement that the sources of energy must be capable of returning the throttle to idle in the event of a single severance or disconnection. The correspondents did not submit sufficient information to enable the agency to determine whether the proper mechanical operation of the treadle was sufficient to assure return to idle in the event of an electrical severance.

NHTSA notes that although the use of two springs on the treadle assembly may

represent good treadle design, it does not intrinsically overcome a disconnection anywhere within an electronic accelerator control system. Thus, good treadle design does not provide an electronic accelerator control system with the same degree of fail-safe operation provided a mechanical system by redundant return springs on a traditional fuel control rack. Those springs on a traditional rack could overcome an accelerator control disconnection and return the throttle to idle. Further, providing good treadle design does not solve the problem of single point disconnection in electronic systems which now would include connectors, wires, computer components and possibly even software elements. Even parties recognizing the analogy between wire severance and linkage severance have asked whether the standard applies to subsequent short circuits as well as open disconnections.

NHTSA believes that the volume of requests for interpretation might be reduced if, instead of answering these questions by drawing analogies between traditional mechanical components and new electronic systems, it amended the Standard to include provisions and language specifically tailored to electronic systems. There are limitations to the agency's ability to make regulatory language, which reflects the design of mechanical systems, serve the purpose of regulating both mechanical and electronic systems. NHTSA also believes that amending the Standard not only to update it, but also possibly to redefine what constitutes fail safe operation might give manufacturers more flexibility in designing electronic systems and enable the agency to better ensure that electronic systems function safely. In order to do this, the agency must identify the most common predictable failures for electronic systems and ascertain the most appropriate response to those failures.

NHTSA is also concerned that regulating electronic systems by drawing analogies to mechanical systems may have the effect of limiting the permissible responses to failures in electronic systems to the fail-safe modes of mechanical systems. At present, the failure modes (i.e., disconnection and severance) specified in Standard No. 124 are the predictable failure modes of a mechanical system. The agency believes that the regulation of electronic systems in a manner tailored to them can be beneficial to manufacturers, vehicle users, and the public. For example, with electronic systems, there may be failure modes in which it is wiser to either shut down the engine or to provide for a fail-safe mode in which the engine has just enough power to permit the vehicle to be driven to the side of the road, than to require that the engine be returned to idle. Since such choices were not feasible with mechanical controls, they were not included in Standard No. 124.

Through this request for comments, NHTSA wishes to determine whether it can propose amendments which identify the predictable failure modes of electronic systems and specify an acceptable safe response for each mode.

Normal v. Failure Modes

On many trucks, locking hand controls are necessary for the operation of engine-driven vocational equipment, i.e., work-performing equipment such as garbage compactors or cement mixers, when the vehicle is parked. Similar locking hand controls are also provided to facilitate engine warm-up. Obviously, locking hand controls can be thought of as preventing the return to normal idle speed when the accelerator pedal is released (defined in the Standard as a failure). Several requests for interpretation have resulted. However, locking hand controls do not affect highway safety because the locking controls are not meant to be used to drive vehicles. Explicit specification in the standard of what is or is not permissible with respect to the operation of locking hand controls could eliminate a source of ambiguity.

Likewise, the lack of absolute repeatability in the normal operation of some electronic accelerator controls results in the return to a range of idle speeds instead of a single idle speed. While this range is narrow enough to permit safe operation of a vehicle, the return to a range of speeds instead of a single speed nevertheless introduces questions about whether a range is narrow enough to be regarded as complying with the requirements of the standard for return to idle speed. A revision of the standard offers an opportunity to adopt language that distinguishes between normal safe characteristics of accelerator controls and instances of failure.

Questions for Comment

In order to determine whether the agency should propose to amend Standard No. 124 and to obtain a better idea of technology that is presently available, NHTSA asks the following questions to clarify engineering issues. Sections A and B apply to electronic systems only. Sections C, D, E and F are of general applicability.

A. Industry Consensus

The Society of Automotive Engineers (SAE) has developed recommended practices for electronic signal interfaces for heavy diesel vehicle engine control processors and for some aspects of accelerator pedal position sensor performance. The SAE's recommended practice specifies that the accelerator position sensor (APS) assembly shall comply with all appropriate Federal motor vehicle safety standards.

A1. Has the SAE or other industry consensus standards organizations considered fail-safe provisions for electronic accelerator controls? Is there industry agreement (informal or formal) concerning what fail-safe provisions should be adopted for electronic accelerator control systems?

A2. What fail-safe strategies are now being employed by vehicle and component manufacturers?

B. Technical Considerations of a Fail-Safe Electronic Accelerator Control System

NHTSA believes that the potential points of failure of an electronic accelerator control system are:

—the mechanical linkage and return springs between the pedal and the accelerator position sensor (APS);
—the electrical connections between the APS and the engine control processor;
—the electrical connections between the engine control processor and other critical sensors;
—the electrical connections between the engine control processor and fuel or air metering devices which determine engine speed;
—power to the engine control processor, the APS and critical sensors; and
—the integrity of the engine control processor, APS, and other critical sensors.

A single point disconnection would mean the severance of a single wire or the disconnection of all the terminals housed in a single connector. The consequences both of an open circuit or a short circuit would ordinarily be relevant, but NHTSA does not exclude the possibility that some designs could prevent either a short circuit or an open circuit in the event of a disconnection. Critical sensors are those whose malfunction or disconnection could cause a significant uncontrolled engine overspeed. The agency is not aware that sensors other than the APS are critical in a safety sense.

With this background, NHTSA asks the following questions:

B1. Are there other predictable points of failure of an electronic control system?

B2. Are sensors other than the APS critical to safety on either gasoline or diesel engines?

B3. Are engine development trends pushing other sensors toward safety critical operation (i.e., to become a sensor whose malfunction or disconnection could cause a significant uncontrolled engine overspeed)?

B4. Is it practical (from an engineering standpoint) to expect a fail-safe design of a unitary electronic accelerator control system, even in the limited sense of ensuring fail-safe performance in the case of single point failures at predictable locations? Would it be more practical (and still meet the need for safety) to use a redundant, simplified APS and engine controller, active only at the idle position of the pedal? Is the use of redundant systems more practical than a single system to achieve fail-safe performance?

B5. Do any currently produced vehicles with electronic accelerator control systems use redundancy to achieve fail-safe operation?

C. Vehicle Drive Functions v. Vocational Functions

NHTSA legal interpretations regarding hand throttle controls view their operation as setting a new idle speed to which the throttle should return in the prescribed time limits ''upon release of the driver-operated accelerator control system.'' This view is accurate for traditional ''fast idle'' setting devices for cold engine operation. But, it may also have resulted in interpretations that do not distinguish between accelerator control systems that drive the vehicle, and auxiliary accelerator controls meant to allow the operation of vocational equipment (such as the compactor on a garbage truck) on a parked vehicle.

C1. How is the cold engine fast idle function accomplished with electronic accelerator controls?

C2. How is the engine of a parked vehicle held at the appropriate speed to operate vocational equipment when the vehicle is equipped with an electronic accelerator control system?

C3. Is there a general way to distinguish between accelerator controls affecting the driving of the vehicle and those affecting only the vehicle's operation as a power source for vocational equipment, presumably without effect on highway safety?

D. Initial Idle Speed

Manufacturers have been concerned with the question of how consistently a vehicle's engine must return to exactly the same idle speed to meet Standard No. 124. Apparently, the resolution and hysteresis of the various sensors and the discrete nature of digital systems create idle speed variations that do not in any way indicate failure.

D1. Would it be practical to designate a range about a vehicle's initial idle speed to clarify the difference between normal and abnormal performance of an accelerator control system? Please describe the desirable extent of such a range and provide a rationale for that range.

E. Public Technical Meeting

NHTSA believes that the development of any proposal to amend Standard No. 124 may benefit from a direct, oral exchange of ideas among NHTSA, vehicle manufacturers, and other affected parties. Reliance solely on written public comments may not be the most effective means of assessing the appropriate steps for ensuring the safe operation of electronic accelerator control systems.

E1. Once the agency has analyzed the written comments submitted in response to this document, should it hold a public technical meeting to discuss possible proposals for amending the Standard No. 124? If so, on which issues should such a public technical meeting focus?

F. Other Issues

F1. Should the agency propose to amend Standard No. 124 in any other respect that has not been discussed above? If so, please describe how the agency should propose to amend the Standard, and provide a rationale for the recommended change.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This request for comment was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this request for comment and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency anticipates if a proposal and ultimately a final rule should result from this request for comment, new requirements would not be imposed on manufacturers with respect to the currently regulated systems. The request for comment seeks to find cost effective means to make Standard No. 124 more understandable when applied to electronic accelerator control systems. If NHTSA decides to initiate rulemaking, it is NHTSA's intent that the rulemaking not impose any additional costs.

Procedures for Filing Comments

Interested persons are invited to submit comments on this request for comment. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received after the comment due date will be considered as suggestions for any future rulemaking action. Comments on the request for comment will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: November 28, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–29453 Filed 12–1–95; 8:45 am]

BILLING CODE 4910–59–P

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Robinson/Scott Landscape Management Project, Willamette National Forest, Lane and Linn Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to thin and/or regenerate forest stands, construct roads, and use prescribed fire in the Upper McKenzie Watershed. The landscape management project is needed to: (1) Provide landscape-level health and vegetation diversity within the project area to meet issues identified during watershed analysis and public scoping; and (2) provide timber products as directed by the Willamette Forest Plan, as amended. Project is proposed for fiscal years 1997–2002. The Willamette National forest invites written comments on the scope of the analysis. The agency will give full notice of the full environmental analysis and decision making process for the proposal so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by March 1, 1996.

ADDRESSES: Send written comments to Eugene Skrine, District Silviculturist, McKenzie Ranger District, McKenzie Bridge, Oregon 97413.

FOR FURTHER INFORMATION CONTACT: Eugene Skrine, District Silviculturist, McKenzie Ranger District, McKenzie Bridge, Oregon 97413, Phone (541) 822–3381.

SUPPLEMENTARY INFORMATION: The USDA, Forest Service proposal includes: treatment of approximately 900–1500 acres with various regeneration harvest methods approximating the pattern and scale of relatively frequent stand-replacement fires; treatment of approximately 500–2000 acres with commercial thinning treatments that approximate the pattern of frequent low to moderate intensity fires; provide long term sustainable habitat for big game and other wildlife species; develop a long term vegetation management plan for high quality riparian habitat to benefit bull trout; maintain major components of the landscape-level ecosystem within the range of historic variability; reset some meadows to historic conditions with use of fire; produce ''no net increase'' in permanent roads.

Preliminary issues have been identified and include: historical disturbance patterns; biological diversity at the stand and landscape levels; recreation experience and scenic byway; threatened, endangered, and sensitive plant and animal species; High Emphasis Elk Area management. A range of alternatives will be developed including a no action alternative.

This draft EIS will tier to the 1990 Final EIS for the Willamette National Forest Land and Resource Management Plan as amended by the Northwest Forest Plan (ROD) (1994). The Forest Service is the lead agency.

Initial scoping will begin in November 1995. A public participation plan is being developed with public meeting and public tour dates to be announced. The public is invited to offer suggestions and comments in writing.

The draft EIS is expected to be completed in September 1996. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions.*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978), Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts, *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in December 1996. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Santiam Forest Health Project. Darrel L. Kenops, Forest Supervisor, is the Responsible Official. As the Responsible Official, he will decide whether to implement the project. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to the Forest Service Appeal Regulations (36 CFR Part 215).

Dated: November 21, 1995.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 95–29441 Filed 12–1–95; 8:45 am]

BILLING CODE 3410–01–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations on Records Release

AGENCY: Assassination Records Review Board.

ACTION: Notice of Formal Determinations.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on November 13 and 14, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the Federal Register within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street, NW., Washington, DC 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On November 13 and 14, 1995, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted as well as the number of sustained postponements.

REVIEW BOARD DETERMINATIONS

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
FBI Documents				
124–10003–10063	1	0	Open in Full	n/a
124–10018–10356	0	1	Postponed in Part	2017
124–10018–10365	0	1	Postponed in Part	2017
124–10018–10491	1	1	Postponed in Part	2005
124–10018–10498	0	2	Postponed in Part	2017
124–10026–10413	1	0	Open in Full	n/a
124–10027–10028	0	2	Postponed in Part	2017
124–10027–10033	0	1	Postponed in Part	2017
124–10027–10161	6	5	Postponed in Part	2017
124–10027–10232	5	0	Open in Full	n/a
124–10027–10233	3	0	Open in Full	n/a
124–10035–10116	0	5	Postponed in Part	2017
124–10037–10125	0	4	Postponed in Part	2017
124–10053–10346	0	1	Postponed in Part	2017
124–10058–10009	2	2	Postponed in Part	2017
124–10058–10084	4	0	Open in Full	n/a
124–10058–10085	8	0	Open in Full	n/a
124–10058–10086	3	0	Open in Full	n/a
124–10058–10311	0	2	Postponed in Part	2017
124–10058–10403	0	1	Postponed in Full	2017
124–10073–10368	3	0	Open in Full	n/a
124–10073–10383	4	0	Open in Full	n/a
124–10079–10223	0	2	Postponed in Part	2017
124–10087–10334	2	4	Postponed in Part	2017
124–10143–10002	0	1	Postponed in Part	2017
124–10144–10082	0	1	Postponed in Part	2017
124–10159–10038	0	2	Postponed in Part	2017
124–10160–10008	0	2	Postponed in Part	2017
124–10160–10412	0	2	Postponed in Part	2017
124–10170–10009	0	1	Postponed in Part	2017
124–10170–10034	0	1	Postponed in Part	2017
124–10170–10094	0	1	Postponed in Part	2017
124–10173–10008	0	1	Postponed in Part	2017
124–10178–10003	4	0	Open in Full	n/a
124–10193–10067	1	0	Postponed in Part	2017
124–10228–10385	0	2	Postponed in Part	2017
124–10228–10416	0	5	Postponed in Part	2017
124–10239–10385	2	2	Postponed in Part	2017
124–10241–10124	4	0	Open in Full	n/a
124–10243–10077	0	2	Postponed in Part	2017
124–10243–10078	0	1	Postponed in Full	2017
124–10243–10386	0	1	Postponed in Part	2017
124–10254–10419	6	5	Postponed in Part	2017
124–10256–10179	3	0	Open in Full	n/a
124–10260–10408	3	0	Open in Full	n/a
124–10267–10400	0	1	Postponed in Part	2017
124–10269–10256	0	2	Postponed in Part	2017
124–10270–10014	0	1	Postponed in Part	2017

REVIEW BOARD DETERMINATIONS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
124–10270–10190	0	1	Postponed in Part	2017
124–10272–10033	1	1	Postponed in Part	2017
124–10275–10359	2	2	Postponed in Part	2017
124–10275–10486	0	1	Postponed in Part	2017
124–10276–10104	1	2	Postponed in Part	2017
CIA Documents				
104–10015–10049	6	0	Open in Full	n/a
104–10015–10258	15	4	Postponed in Part	2005
104–10015–10263	2	0	Open in Full	n/a
104–10015–10316	1	1	Postponed in Part	12/1995
104–10015–10350	2	0	Open in Full	n/a
104–10015–10353	10	1	Postponed in Part	2005
104–10015–10356	5	1	Postponed in Part	2005
104–10015–10384	2	0	Open in Full	n/a
104–10015–10392	9	1	Postponed in Part	12/1995
104–10015–10398	6	2	Postponed in Part	12/1995
104–10015–10412	5	0	Open in Full	n/a
104–10015–10415	5	0	Open in Full	n/a
104–10015–10416	6	0	Open in Full	n/a
104–10015–10417	3	0	Open in Full	n/a
104–10015–10428	3	1	Postponed in Part	2005
104–10016–10036	3	0	Open in Full	n/a
104–10016–10040	8	1	Postponed in Part	2005
104–10016–10045	2	0	Open in Full	n/a
104–10017–10003	1	0	Open in Full	n/a
104–10017–10012	20	0	Open in Full	n/a
104–10017–10038	8	0	Open in Full	n/a
104–10017–10053	3	0	Open in Full	n/a
104–10017–10065	9	0	Open in Full	n/a
104–10018–10002	2	0	Open in Full	n/a
104–10018–10028	1	0	Open in Full	n/a
104–10018–10029	1	0	Open in Full	n/a
104–10018–10031	1	0	Open in Full	n/a
104–10018–10032	1	0	Open in Full	n/a
104–10018–10046	2	0	Open in Full	n/a
104–10018–10049	1	0	Open in Full	n/a
104–10018–10056	1	0	Open in Full	n/a
104–10018–10074	23	0	Open in Full	n/a
104–10018–10084	2	1	Postponed in Part	2005
HSCA Documents				
180–10071–10165	2	0	Open in Full	n/a
180–10074–10079	4	0	Open in Full	n/a
180–10074–10394	2	0	Open in Full	n/a
180–10074–10396	1	0	Open in Full	n/a
180–10074–10397	1	0	Open in Full	n/a
180–10078–10384	0	1	Postponed in Part	2017
180–10078–10493	2	0	Open in Full	n/a
180–10080–10131	0	2	Postponed in Part	2017
180–10080–10231	0	1	Postponed in Part	2017
180–10080–10497	1	0	Open in Full	n/a
180–10082–10452	1	0	Open in Full	n/a
180–10082–10453	2	0	Open in Full	n/a
180–10082–10454	2	0	Open in Full	n/a
180–10083–10419	2	0	Open in Full	n/a
180–10087–10136	129	0	Open in Full	n/a
180–10087–10137	15	0	Open in Full	n/a
180–10087–10138	31	0	Open in Full	n/a
180–10087–10191	3	0	Open in Full	n/a
180–10089–10262	10	0	Open in Full	n/a
180–10090–10027	1	0	Open in Full	n/a
180–10090–10123	1	0	Open in Full	n/a
180–10093–10022	2	0	Open in Full	n/a
180–10093–10118	1	0	Open in Full	n/a
180–10097–10345	31	0	Open in Full	n/a
180–10099–10491	1	0	Open in Full	n/a

REVIEW BOARD DETERMINATIONS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
180–10104–10331	4	0	Open in Full	n/a
180–10104–10481	2	0	Open in Full	n/a
180–10105–10305	1	0	Open in Full	n/a
180–10109–10358	0	1	Postponed in Part	2017
180–10112–10218	11	0	Open in Full	n/a
180–10117–10149	9	0	Open in Full	n/a
180–10118–10032	13	0	Open in Full	n/a
180–10118–10033	14	0	Open in Full	n/a
180–10118–10038	0	1	Postponed in Part	2017
180–10118–10041	13	0	Open in Full	n/a
180–10125–10075	0	23	Postponed in Part	2017
180–10125–10076	0	23	Postponed in Part	2017
180–10125–10077	0	79	Postponed in Part	2017
180–10125–10078	0	87	Postponed in Part	2017
180–10125–10079	0	89	Postponed in Part	2017
180–10125–10080	0	89	Postponed in Part	2017
180–10125–10081	0	87	Postponed in Part	2017
180–10125–10082	0	91	Postponed in Part	2017
180–10125–10083	0	96	Postponed in Part	2017
180–10125–10084	0	114	Postponed in Part	2017
180–10125–10085	0	116	Postponed in Part	2017
180–10125–10086	0	15	Postponed in Part	2017
180–10125–10087	0	114	Postponed in Part	2017
180–10125–10088	0	122	Postponed in Part	2017
180–10125–10089	0	114	Postponed in Part	2017
180–10125–10090	0	114	Postponed in Part	2017
180–10125–10091	0	118	Postponed in Part	2017
180–10125–10092	0	018	Postponed in Part	2017
180–10125–10093	0	017	Postponed in Part	2017
180–10125–10094	0	017	Postponed in Part	2017
180–10125–10095	0	012	Postponed in Part	2017
180–10125–10096	0	012	Postponed in Part	2017
180–10125–10097	0	010	Postponed in Part	2017
180–10125–10098	0	001	Postponed in Part	2017
180–10125–10100	0	84	Postponed in Part	2017
180–10125–10101	0	79	Postponed in Part	2017
180–10125–10102	0	66	Postponed in Part	2017
180–10125–10103	0	66	Postponed in Part	2017
180–10125–10104	0	73	Postponed in Part	2017
180–10125–10105	0	73	Postponed in Part	2017
180–10125–10106	0	126	Postponed in Part	2017
180–10125–10107	0	146	Postponed in Part	2017

On October 24, 1995, the Review Board made the formal determination to release in full FBI document number 124–10020–10093. The FBI subsequently supplied additional information to the Review Board in support of its original redaction. On November 14, 1995, the Review Board voted to reconsider the record at a future date and decided to provide the FBI additional time to supply evidence in support of its proposed redactions.

Dated: November 28, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–29389 Filed 12–1–95; 8:45 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Sheryl Pinsonnault

In the matter of Sheryl Pinsonnault, 126 S. 293 Place, Federal Way, Washington 98003, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having notified Sheryl Pinsonnault (Pinsonnault) of its intention to initiate an administrative proceeding against her pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991 and Supp. 1995)) (the Act),[1] and part 788 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1995)) (the Regulations), based on allegations that, on six different occasions between on or about March 6, 1990 and on or about October 3, 1990, Pinsonnault caused, aided, and abetted the export, without the validated license required by Section 772.1(b) of the Regulations, of U.S.-origin aircraft parts from the United States to Belgium for use in repairing a Lockheed L–100 aircraft owned by Libya, in violation of section 787.2 of the Regulations;

[1] The Act expired on August 20, 1994. Executive Order No. 12924 (59 FR 43437, August 23, 1994), extended by Presidential Notice of August 15, 1995 (60 *FR* 42767, August 17, 1995), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)).

The Department and Pinsonnault having entered into a Consent Agreement whereby the Department and Pinsonnault have agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Consent Agreement having been approved by me;

It Is Therefore Ordered

First, that a civil penalty of $10,000 is assessed against Pinsonnault, $5,000 of which shall be paid to the Department within 30 days from the date of this Order. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining $5,000 shall be suspended for a period of three years from the date from the entry of this Order and shall thereafter be waived, provided that, during the period of suspension, Pinsonnault has committed no violation of the Act, or any regulation, order, or license issued thereunder.

Second, that, Sheryl Pinsonnault, 126 S. 293 Place, Federal Way, Washington 98003, shall, for a period of three years from the date of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to Pinsonnault by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

D. As authorized by Section 788.17(b) of the Regulations, the last two years of the denial period shall be suspended for a period of two years beginning one year from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Pinsonnault commits no violation of the Act or any regulation, order or license issued thereunder.

Third, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public.

This Order is effective immediately.

Entered this 27th day of November 1995.

John Despres,

Assistant Secretary for Export Enforcement.

[FR Doc. 95–29432 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–DT–M

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 10/16/95–11/20/95

Firm name	Address	Date petition accepted	Product
BARRETT TRAILERS, INC	2115 HARDCASTLE BOULEVARD, PURCELL, OK 73080.	10/27/95	LIVESTOCK TRAILERS AND ACCESSORIES.
COLONIAL KNIFE COMPANY, INC	AGNES AT MAGNOLIA ST., PROVIDENCE, RI 02909.	11/02/95	POCKET KNIVES AND HUNTING KNIVES.
FLORENCE SPORTSWEAR, INC	4400 HELTON DRIVE, FLORENCE, AL 35630.	11/03/95	WOMEN'S KNIT TOPS.
GKN WALTERSCHEID, INC	16W030 83RD STREET, BURR RIDGE, IL 60521.	11/09/95	DRIVE SHAFTS, CLUTCHES AND REPAIR PARTS FOR AGRICULTURAL POWER TAKE-OFFS.
LMC OPERATING CORP	2503 N. MAIN STREET, LOGAN, UT 98341.	11/13/95	SNOW GROOMING EQUIPMENT AND INDUSTRIAL ALL TERRAIN UTILITY VEHICLES.
MISSION VALLEY TEXTILE, INC	360 McKENNA AVENUE, NEW BRAUNFELS, TX 78131.	10/23/95	COTTON FABRICS.
NOA MEDICAL INDUSTRIES, INC	205 N. TWO STREET, MARTHASVILLE, MO 63357.	11/14/95	HOSPITAL FURNITURE.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 10/16/95–11/20/95—Continued

Firm name	Address	Date petition accepted	Product
PIDIDDLY-LINKS LTD	85 KATRINE LAND, P.O. BOX 700, LAKE KATRINE, NY 12449.	10/18/95	IMITATION JEWELRY OF BASE METAL (BRASS).
PLATOON UNIFORMS & SPORTSWEAR, INC	P.O. BOX 156, COMER, GA 30629	11/06/95	MEN'S TROUSERS.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 27, 1995.

Lewis R. Podolske,

Director, Trade Adjustment Assistance Division.

[FR Doc. 95–29366 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–24–M

Foreign-Trade Zones Board

[Order No. 789]

Approval of Manufacturing Authority Within Foreign-Trade Zone 172; Oneida County, New York, Low Complexity Manufacturing Group, Inc. (Copier/ Laser Printer Components)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, § 400.28(a)(2) of the Board's regulations requires approval of the Board prior to commencement of new manufacturing/ processing activity within existing zone facilities;

Whereas, County of Oneida, New York, grantee of FTZ 172, Oneida County, New York, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Low Complexity Manufacturing Group, Inc. (subsidiary of Xerox Corporation), to manufacture copier and laser printer components within FTZ 172 (filed 9/20/95, FTZ Docket A(32b1)–18–95; Docket 73–95, assigned 11/8/95);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/ processing activity under certain circumstances, including situations where the proposed activity is similar to activity recently approved by the Board (§ 400.32(b)(1)(i)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 95–29465 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity To Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than December 31, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period
Antidumping Duty Proceedings	
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings (A–351–602)	12/01/94–11/30/95
Brazil: Silicomanganese (A–351–824)	06/17/94–11/30/95
Canada: Elemental Sulphur (A–122–047)	12/01/94–11/30/95
Germany: Animal Glue and Inedible Gelatin (A–428–062)	12/01/94–11/30/95

	Period
India: Stainless Steel Wire Rods (A–533–808)	12/01/94–11/30/95
Japan: Certain Small Business Telephone Systems and Subassemblies Thereof (A–588–809)	12/01/94–11/30/95
Japan: Cellular Mobile Telephones and Subassemblies (A–588–405)	12/01/94–11/30/95
Japan: Certain Electric Motors of 150–500 Horsepower (A–588–091)	12/01/94–11/30/95
Japan: Drafting Machines and Parts Thereof (A–588–811)	12/01/94–11/30/95
Japan: Polychloroprene Rubber (A–588–046)	12/01/94–11/30/95
Japan: Steel Wire Strand for Prestressed Concrete (A–588–068)	12/01/94–11/30/95
Korea: Certain Welded Stainless Steel Pipes (A–580–810)	12/01/94–11/30/95
Korea: Photo Albums and Filler Pages (A–580–501)	12/01/94–11/30/95
Mexico: Porcelain-on-Steel Cooking Ware (A–201–504)	12/01/94–11/30/95
New Zealand: Low-Fuming Brazing Cooper Rod and Wire (A–614–502)	12/01/94–11/30/95
Sweden: Welded Stainless Steel Hollow Products (A–401–603)	12/01/94–11/30/95
Taiwan: Certain Carbon Steel Butt-Weld Pipe Fittings (A–583–605)	12/01/94–11/30/95
Taiwan: Certain Small Business Telephone Systems and Subassemblies Thereof (A–583–806)	12/01/94–11/30/95
Taiwan: Certain Welded Stainless Steel Pipe (A–583–815)	12/01/94–11/30/95
Taiwan: Porcelain-on-Steel Cooking Ware (A–583–508)	12/01/94–11/30/95
The People's Republic of China: Certain Cased Pencils (A–570–827)	12/21/94–11/30/95
The People's Republic of China: Porcelain-on-Steel Cooking Ware (A–570–506)	12/01/94–11/30/95
The People's Republic of China: Silicomanganese (A–570–824)	06/17/94–11/30/95
Countervailing Duty Proceedings	
Mexico: Porcelain-on-Steel Cooking Ware (C–201–505)	12/01/94–11/30/95

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 CFR 355.22(a) of the Department's Interim Regulations (60 FR 25137 (May 11, 1995)), an interested party must specify the individual producers or exporters covered by the order for which they are requesting a review. Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S., Department of Commerce, Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of ''Initiation of Antidumping (Countervailing) Duty Administrative Review,'' for requests received by December 31, 1995. If the Department does not receive, by December 31, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: November 28, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–29464 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–DS–M

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of December 1995.

EFFECTIVE DATE: December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are

notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Brazil
Certain Carbon Steel Butt-Weld Pipe Fittings
A–351–602
51 FR 45152
December 17, 1986
Contact: Thomas Schauer at (202) 482–4852

Germany
Animal Glue and Inedible Gelatin
A–428–062
42 FR 64116
December 22, 1977
Contact: Arthur N. DuBois at (202) 482–6312

Japan
Cellular Mobile Telephones and Subassemblies
A–588–405
50 FR 51724
December 19, 1985
Contact: Charles Riggle at (202) 482–0650

Japan
Drafting Machines and Parts Thereof
A–588–811
54 FR 53671
December 29, 1989
Contact: Mathew Blaskovich at (202) 482–5831

Japan
Large Electric Motors
A–588–091
45 FR 84994
December 24, 1980
Contact: Elizabeth Urfer at (202) 482–4052

Japan
Steel Wire Strand
A–588–068
43 FR 57599
December 8, 1978
Contact: Kris Campbell at (202) 482–3813

New Zealand
Low-Fuming Brazing Copper Rod & Wire
A–614–502
50 FR 49740
December 4, 1985
Contact: Karin Price at (202) 482–3782

Taiwan
Porcelain-On-Steel Cooking Ware
A–583–508
51 FR 43416
December 2, 1986
Contact: Amy Wei at (202) 482–1131

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of December 1995. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: November 22, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–29364 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–DS–P

Carnegie Mellon University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–062. *Applicant:* Carnegie Mellon University, Pittsburgh, PA 15213. *Instrument:* Electron Microscope, Model H-7100. *Manufacturer:* Nissei Sangyo, Japan. *Intended Use:* See notice at 60 FR 40823, August 10, 1995. *Order Date:* March 28, 1995.

Docket Number: 95–065. *Applicant:* University of Utah, Salt Lake City, UT 84112. *Instrument:* Electron Microscope, Model H-7100. *Manufacturer:* Hitachi Ltd., Japan. *Intended Use:* See notice at 60 FR 42847, August 17, 1995. *Order Date:* March 30, 1995.

Docket Number: 95–069. *Applicant:* Saint Barnabas Medical Center, Livingston, NJ 07039. *Instrument:* Electron Microscope, Model JEM-1210. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 60 FR 48505, September 19, 1995. *Order Date:* December 27, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–29467 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–DS–F

Miami University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–145R. *Applicant:* Miami University, Oxford, OH 45056. *Instrument:* Cryostage. *Manufacturer:* Linkham Scientific Instruments, Ltd., United Kingdom. *Intended Use:* See notice at 60 FR 442, January 4, 1995. *Reasons:* The foreign instrument provides: (1) an on-line video image analysis system with ability to perform calibrations, line measurements, angle measurements and circle area measurements, (2) minimum cooling/warming rate of 0.01°C/min and (3) a nitrogen purge chamber surrounding the cryostage and sample. *Advice Received From:* National Institutes of Health, September 21, 1995.

Docket Number: 95–012. *Applicant:* University of California, Berkeley, CA 94720-4767. *Instrument:* Electron Microprobe, Model SX50. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 60 FR 16618, March 31, 1995. *Reasons:* The foreign instrument provides: (1) a co-axial high resolution light optical microscope, (2) multiple vertically mounted wave length dispersive spectrometers with Rowland circle radius of 160mm and (3) an automated optical encoded precision stage for sample relocation to <0.5 microns. *Advice Received From:* National Institutes of Health, April 28, 1995.

Docket Number: 95–055. *Applicant:* Dartmouth College, Hanover, NH 03755-3571. *Instrument:* Thermal Ionization Mass Spectrometer, Model MAT 262/RPQ. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 60 FR 39711, August 3, 1995. *Reasons:* The foreign instrument provides magnetic sector performance with an inductively-coupled plasma ion source for an isotope ratio sensitivity of 0.005%. *Advice Received From:* National Institutes of Health, September 22, 1995.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–29363 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–DS–F

Texas A&M University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–073. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Automatic Carbonate Preparation Device, Model Kiel II. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 60 FR 48506, September 19, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the previously imported instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 95–29466 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications: West Palm Beach, Florida

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the West Palm Beach Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the West Palm Beach, Florida Metropolitan Area. The award number of the MBDC will be 04–10–96003–01.

DATES: The closing date for applications is January 3, 1996. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before January 3, 1996. A pre-application conference will be held on December 20, 1995, at 9 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, N.W., Suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300. Proper identification is required for entrance into any Federal building.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson at (404) 730–3300.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from April 1, 1996 to April 30, 1997, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of

minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center (Catalog of Federal Domestic Assistance)

Dated: November 27, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–29365 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[I.D. 112295A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification 1 to permit 924.

SUMMARY: Notice is hereby given that on November 16, 1995, NMFS issued Modification 1 to Permit Number 924 to the National Marine Fisheries Service Southwest Region (P772#66) to take listed sea turtles for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The application, permit, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

SUPPLEMENTARY INFORMATION: On November 6, 1995, a request was received from the National Marine Fisheries Service Southwest Region (P772#66), to modify the due date of annual reporting on the take of listed sea turtles under Permit 924.

As required by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222), issuance of this modification was based on a finding that such modification: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of this modification, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 27, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–29445 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 112295B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application for a scientific research permit (P423B).

SUMMARY: Notice is hereby given that Drs. Mary Moser and Steve W. Ross have applied in due form for a permit to take listed shortnose sturgeon for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before January 3, 1996.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Application (P423B) requests a permit under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). The applicant requests a 2-year permit to collect shortnose sturgeon in North Carolina to determine the distribution and habitat use.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: November 27, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–29446 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

[Docket No. 950921236–5236–01]

RIN 0651–XX04

Request for Comments on Interim Guidelines for Examination of Design Patent Applications for Computer-Generated Icons; Comment Period Extension

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: A request for comments on interim guidelines for the examination of design patent applications for computer-generated icons was published at 60 FR 52170, October 5, 1995. This notice extends the deadline for accepting comments. The deadline for accepting comments is being extended to accommodate members of the public who requested an extension.

DATES: Written comments on the interim guidelines must now be received on or before December 6, 1995.

ADDRESSES: Written comments should be addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231, marked to the attention of John Kittle, Director, Group 1100/2900, Crystal Plaza 3, 8D19. Comments may also be submitted by telefax at (703) 305–3600 or by electronic mail through the INTERNET to ''icon-pat@uspto.gov.''

FOR FURTHER INFORMATION: Contact John Kittle by telephone at (703) 308–1495 or by mail to his attention addressed to the Assistant Commissioner for Patents, Group 1100/2900, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Written comments should include the following information:

—Name and affiliation of the individual responding;

—An indication of whether the comments offered represent views of the respondent's organization's or are the respondent's personal views; and

—If applicable, information on the respondent's organization, including the type of organization and general areas of interest.

Parties presenting written comments are requested, where possible, to provide their comments in machine-readable format. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5″ floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine-readable submissions should be provided as unformatted text (e.g., ASCII or plain text).

Dated: November 22, 1995.

Lawrence J. Goffney, Jr.,

Acting Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks.

[FR Doc. 95–29429 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa Arrangement for Certain Cotton, Wool, Man-Made Fiber, Silk-Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

November 28, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa requirements.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Mauritius agreed to establish a new Export Visa Arrangement for certain cotton, wool, man-made fiber, silk-blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported from Mauritius on and after December 1, 1995. Goods exported during the period December 1, 1995 through December 31, 1995 shall not be denied entry for lack of a visa. All goods exported after January 1, 1996 must be accompanied by an appropriate export visa.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry of certain textile products, produced or manufactured in Mauritius and exported from Mauritius on and after December 1, 1995 for which the Government of the Mauritius has not issued an appropriate export visa.

A facsimile of export visa stamp is on file at the U.S. Department of Commerce in Room 3100.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Information regarding the 1996 CORRELATION will be published in the Federal Register at a later date.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa and certification requirements set forth in the letter published below to the Commissioner of Customs.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 28, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Export Visa Arrangement of September 12, 1995 between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 1, 1995, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk-blend, and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670, and 800–899, including merged and part categories, produced or manufactured in Mauritius and exported from Mauritius on and after December 1, 1995 for which the Government of the Mauritius has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories become subject to import quota the entire category(s) or part category(s) shall be included in the coverage of this arrangement. Goods exported during the period December 1, 1995 through December 31, 1995 shall not be denied entry for lack of an export visa.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Mauritius is ''MU''), and a six digit numerical serial number identifying the shipment; e.g., 5MU123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature of the issuing official and the printed name of the issuing official of the Government of Mauritius.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, annotated or successor documents shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 434–210 DZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of 347 merchandise, the shipment may be visaed as ''Cat. 347,'' but not as ''Cat. 348''). If, however, a merged quota category such as 340/640 has a quota sublimit on Category 340, then there must be a ''Category 340'' visa for the shipment if it includes Category 340 merchandise.

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the front of the textile document.

If the visa is not acceptable then a new correct visa or a visa waiver must be presented to the U.S. Customs Service before any portion of the shipment will be released. A visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of Mauritius. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Mauritius has been allowed entry into the commerce of the

United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked or commercial sample shipments valued at U.S.$250 or less, do not require an export visa for entry and shall not be charged to existing quota levels.

A facsimile of the visa stamp is enclosed.

The actions taken concerning the Government of Mauritius with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the Federal Register.

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–29468 Filed 12–1–95; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Extension of Approval of a Collection of Information—Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of certain electrically operated toys and children's articles. The collection of information consists of testing and recordkeeping requirements in regulations entitled ''Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children,'' codified at 16 CFR part 1505.

The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than February 2, 1996.

ADDRESSES: Written comments should be captioned ''Electrically Operated Toys'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of the collection of information, or to obtain a copy of 16 CFR part 1505, call or write Nicholas V. Marchica, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0416, extension 2243.

SUPPLEMENTARY INFORMATION: In 1973, the Commission issued safety requirements for electrically operated toys and children's articles to protect children from unreasonable risks of injury from electric shock, electrical burns, and thermal burns. These regulations are codified at 16 CFR part 1505 and were issued under the authority of sections 2 and 3 of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262).

A. Requirements for Electrically Operated Toys

These regulations are applicable to toys, games, and other articles intended for use by children which are powered by electrical current from a 120 volt circuit. Video games and articles designed primarily for use by adults which may be incidentally used by children are not subject to these regulations.

The regulations prescribe design, construction, performance, and labeling requirements for electrically operated toys and children's articles. The regulations also require manufacturers and importers of those products to develop and maintain a quality assurance program. Additionally, section 1505.4(a)(3) of the regulations requires those firms to maintain records for three years containing information about: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

The Office of Management and Budget (OMB) approved the collection of information requirements in the regulations under control number 3041–0035. OMB's most recent extension of approval expired on February 28, 1995. The Commission now proposes to request a reinstatement of approval without change for the information collection requirements in the regulations.

The safety need for this collection of information remains. Specifically, if a manufacturer or importer distributes products that violate the requirements of the regulations, the records required by section 1505.4(a)(3) can be used by the firm and the Commission (i) to identify specific lots or production lines of products which fail to comply with applicable requirements, and (ii) to notify distributors and retailers in the event the products are subject to recall.

B. Estimated Burden

The Commission staff estimates that about 40 firms are subject to the testing and recordkeeping requirements of the regulations. The Commission staff estimates further that the burden imposed by the regulations on each of these firms is approximately 160 hours per year for testing, and about 40 hours a year for recordkeeping. Thus, the total annual burden imposed by the regulations on all manufacturers and importers is about 8,000 hours.

The Commission staff estimates that the hourly wage for the time required to perform the required testing and to maintain the required records is about $13, and that the annual total cost to the industry is approximately $104,000.

During a typical year, the Commission will expend approximately one week of professional staff time reviewing records required to be maintained by the regulations for electrically operated toys. The annual cost to the Federal government of the collection of information collection in these regulations is estimated to be $1,400.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed extension of approval of the collection of information in the regulations for electrically operated toys and children's articles. The Commission specifically solicits information about the hourly burden and monetary costs imposed by the collection of information on firms subject to this collection of information. The Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological

collection techniques, or other form of information technology.

Dated: November 28, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 95–29376 Filed 12–1–95; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of the National Senior Service Corps' Project Profile and Volunteer Activity (PPVA) Information Collection Instruments

AGENCY: Corporation for National and Community Service.

ACTION: Notice of 60-Day Review and Comment Period on Draft 1996 PPVA Information Collection Instruments.

SUMMARY: The National Senior Service Corps announces a 60-day review and comment period during which project sponsors and the public are encouraged to submit comments on revised draft PPVA information collection instruments to be used during the September 1996 annual information collection: PPVA instruments are used to annually collect project and aggregate volunteer demographic and activity information from project sponsors funded under the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), and Senior Companion Program (SCP).

Comments are invited on (1) whether the proposed instruments collect information appropriate and sufficient to meet operational management, planning and reporting needs of the Senior Corps programs; (2) ways to enhance the quality, utility and clarity of the information to be collected; (3) accuracy of agency estimates of reporting burden; and (4) ways to further reduce burden on respondents while meeting program needs.

DATES: The National Senior Service Corps will consider written comments on the proposed instruments and record-keeping requirements received within 60 days from the date of publication.

ADDRESS TO SEND COMMENTS: Janice Forney Fisher, National Senior Service Corps (NSSC), Corporation for National Service, 1201 New York Avenue, N.W., Washington, D.C. 20525.

ESTIMATED ANNUAL REPORTING OR DISCLOSURE BURDEN: 8,267 hours.

Program	No. of respondents	Annual responses per respondent	Average burden per respondent (hours)	Total annual burden on all respondents
RSVP	759	1	8.1	6,148
FGP	279	1	5.1	1,423
SCP	188	1	3.7	696

*This document will be made available in alternate format upon request. TDD (202) 606–5000 ext. 164.

FOR FURTHER INFORMATION PLEASE CONTACT: Janice Forney Fisher (202) 606–5000 ext. 275.

Regulatory Authority: National Service Trust Act of 1993.

Dated: November 28, 1995.

Thomas E. Endres,

Deputy Director, National Senior Service Corps.

[FR Doc. 95–29475 Filed 12–1–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Third Annual National Security Education Program (NSEP) Institutional Grants Competition

AGENCY: Department of Defense, National Security Education Program (NSEP).

ACTION: Notice.

SUMMARY: The NSEP announces the opening of its Third Annual Competition for Grants to U.S. Institutions of Higher Education.

DATES: Grants Solicitations (applications) will be available beginning Monday, February 5, 1996. Preliminary Proposals are due Friday, April 19, 1996.

ADDRESSES: Request copies of the solicitations (applications) from NSEP, Institutional Grants, Rosslyn P.O. Box 20010, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209–2248, by FAX to (703) 696–5667, or via INTERNET: nsepo@nsep.policy.osd.mil

FOR FURTHER INFORMATION CONTACT: Mr. Edmond J. Collier, Deputy Director for External Affairs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Arlington, Virginia 22209–2248; (703) 696–1991 Electronic mail address: collier@nsep.policy.osd.mil.

Dated: November 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–29449 Filed 12–1–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Privacy Act of 1974; Notice to Amend a Record System

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice to Amend a Record System.

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on January 3, 1996 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Directives and Records Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed

by the notice, as amended, published in its entirety.

Dated: November 24, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files *(August 23, 1995, 60 FR 43774).*

CHANGES

* * * * *

SYSTEM LOCATION:

Add the following four paragraphs 'Comprehensive Clinical Evaluation Program, 5205 Leesburg Pike, Skyline 1, Suite 1135, Falls Church, VA 22041–3802.

Commander, U.S. Army Center for Health Promotion and Preventive Medicine, ATTN: MCHB-DE-HR, Aberdeen Proving Ground, MD 21010–5422.

U.S. Army Joint Services Support Group, 7798 Cissna Road, Suite 101, Springfield, VA 22150–3197.

Naval Health Research Center, Division of Clinical Epidemiology, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152–5302.'

* * * * *

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files.

SYSTEM LOCATION:

Department of Defense Persian Gulf Veterans Illnesses Investigative Team, 5205 Leesburg Pike, Falls Church, VA 22041–3881; and Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

Comprehensive Clinical Evaluation Program, 5205 Leesburg Pike, Skyline 1, Suite 1135, Falls Church, VA 22041–3802.

Commander, U.S. Army Center for Health Promotion and Preventive Medicine, ATTN: MCHB-DE-HR, Aberdeen Proving Ground, MD 21010–5422.

U.S. Army Joint Services Support Group, 7798 Cissna Road, Suite 101, Springfield, VA 22150–3197.

Naval Health Research Center, Division of Clinical Epidemiology, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152–5302.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who served in Operation Desert Storm and/or Operation Desert Shield who feel they may have been exposed to biological, chemical, disease, or environmental agents. Those individuals may contact the Persian Gulf Veterans Illnesses Investigative Team by dialing 1–800–472–6719 to report experiences of unusual illness or health conditions following service during the Persian Gulf conflict.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in Persian Gulf military operations, perceived exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical, disease, or environmental agents.

The system contains information from unit and historical records and information provided to the Department of Defense by individuals with first-hand knowledge of reports of possible biological, chemical, disease, or environmental incidents.

Information from health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf is also included. Records include those documents, files, and other matter in the medical, operational, and intelligence communities that could relate to possible causes of Persian Gulf War Veterans illnesses.

Records of diagnostic and treatment methods pursued on subjects following reports of possible incidental exposure are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, 10 U.S.C. 136, and E.O. 9397.

PURPOSE(S):

Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, disease, or environmental agents incident to service in the Persian Gulf War and to conduct scientific or related studies or medical follow-up programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs and the Social Security Administration for appropriate consideration of individual claims for benefits for which that agency is responsible.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders; electronic records are stored on magnetic media; microfilm/microfiche are maintained in appropriate storage containers.

RETRIEVABILITY:

Records are retrieved by case number, name, Social Security Number or service number.

SAFEGUARDS:

Access to areas where records maintained is limited to authorized personnel. Areas are protected by access control devices during working hours and intrusion alarm devices during non-duty hours.

RETENTION AND DISPOSAL:

Files will be retained permanently. They will be maintained in the custody of the Persian Gulf Veterans Illnesses Investigative Team under the oversight of the Assistant Secretary of Defense (Health Affairs) until completion of the Team's investigative mission. Upon disbanding of the Team, custody of the records will be transferred to OASD(HA) where they will be held for five years, and then transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Persian Gulf War Veterans Illnesses Investigative Team, Suite 810, 5205 Leesburg Pike, Falls Church, VA 22041–3881, or to the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Persian Gulf War Veterans Illnesses Investigative Team, Suite 810, 5205 Leesburg Pike, Falls Church, VA 22041–

3881, or to the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

CONTESTING RECORDS PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is from the individuals themselves, witnesses to a possible agent event, health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf, as well as extracts from historical records to include: personnel files and lists, unit histories, medical records, and related sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 95–29450 Filed 12–1–95; 8:45 am]

BILLING CODE 5000–04–F

Proposed Information Collection Available for Public Comment; Notice

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information collection; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Requirements and Resources), ATTN: Reports Clearance Officer, Room 3C980, 4000 Defense Pentagon, Washington, DC 20301–4000. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

Title: Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS): 1996 Impact Aid Funding Surveys.

Summary: This information collection consists of telephone interviews with both state education officials and local school district officials regarding the levels and sources of funding for local education agencies (LEAs) that have over 30 percent of students as military dependents. The proposed information collection will use a computer-assisted telephone interview (CATI) technique, in which telephone interviewers enter responses into a computerized data file. The primary purpose of this survey effort is to determine the feasibility of transferring the Domestic Dependent Elementary and Secondary Schools (DDESS) to local education agencies.

Needs and Uses: The Department of Defense (DoD) currently funds the operation of 58 Domestic Dependent Elementary and Secondary Schools (DDESS) on 15 military installations within the United States (excluding Puerto Rico). These schools were originally funded because the local communities could not provide a suitable education for military dependents living on these installations. In recent years, changes in local conditions and in federal funding priorities have led Congress to reconsider federal funding for the DDESS schools. In 1985, Congress required that the DoD submit a plan for the transfer of the DDESS schools to local education agencies. Although DoD conducted case studies of each DDESS, no action was taken regarding transfer. However, continuing efforts to reduce the federal deficit led the 103rd Congress to request a new study of the transfer issue. House of Representatives Conference Report 103–701 (pp. 963–964) requires that the Department of Defense collect information concerning the possibility of transferring the remaining 15 DDESS schools to neighboring local education agencies. Since a transfer to LEAs would require some mechanism to ensure adequate funding, the appropriate means and sources of funds for LEAs that enroll high proportions of military students is a critical determinant of the feasibility and success of any transfer effort. The House Conference Report, therefore, directs the DoD to conduct a survey of school districts operated by local education agencies in which over 30 percent of enrolled students are military dependents, in order to determine the level of funding for such schools and the sources of that funding. The legislation further specifies that the survey collect information on (1) the previous level of financial support provided by DoD and other federal agencies, and the timing of fiscal decisions concerning the education of military-connected students; (2) the positions of the LEAs and their corresponding state education officials regarding the responsibility of LEAs to educate military-connected students who reside on military installations; and (3) how funding of these school districts compares with other districts within the state that do not have a large percentage of military-dependent students. Findings from the data collection (along with findings from required surveys of military parents regarding the quality of education at the DDESS schools and at the highly impacted LEAs) will be submitted in a report to Congress. Congress will use this information in its consideration of the feasibility of transferring the DDESS schools to local education agencies.

Affected Public: State and local governments.

Annual Burden Hours (Including Recordkeeping): 65.5 hours.

Number of Respondents: 131.

Responses per Respondent: One.

Average Burden per Response: 30 minutes.

Frequency: One time.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Office of the Under Secretary of Defense (Personnel and Readiness) Reports Clearance Officer at (703) 614–4989.

Dated: November 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–29447 Filed 12–1–95; 8:45 am]

BILLING CODE 5000–04–M

Proposed Information Collection Available for Public Comment; Notice

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Requirements and Resources), ATTN: Reports Clearance Officer, Room 3C980, 4000 Defense Pentagon, Washington, DC 20301–4000. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

Title: Record of Military Processing—Armed Forces of the United States; DD Form 1966; OMB Control Number 0704–0173.

Summary: This information collection is used by all Military Services for obtaining data to determine eligibility of applicants for enlistment into the Armed Forces and for establishing enlistment records. The DD Form 1966, ''Record of Military Processing—Armed Forces of United States,'' used in this collection, requests information about name, age, education, previous military service, family, and citizenship. it requires validation that a recruiter has reviewed the information and requires witnesses for verification of the applicants' signature.

Needs and Uses: In accordance with Title 10 USC Sections 504, 505, 508, 510, and 520a; Title 14 USC Sections 351 and 632; and Title 50 USC Appendix, Section 451, applicants must meet minimum standards for enlistment into the Armed Forces. This information collection, which is used by the Military Services and the Coast Guard, gathers the necessary data for determining eligibility in the Armed Forces and for establishing personnel records on those enlisted.

Affected Public: Individuals or households.

Annual Burden Hours: 423,300 hours.

Number of Respondents: 510,000.

Responses per Respondent: 1.

Average Burden per Response: .83 hours.

Frequency: One-time.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Office of the Under Secretary of Defense (Personnel and Readiness) Reports Clearance Officer at (703) 614–8989.

Dated: November 29, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–29448 Filed 12–1–95; 8:45 am]

BILLING CODE 5000–4–M

Department of the Army

Proposed Information Collection Available for Public Comment; Record of Preparation and Disposition of Remains

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Title 10, USC Sections 1481 & 1482 authorize disposition of remains and payments of necessary expenses incident to the death of active duty military personnel.

Title, Applicable Forms, and OMB Control Number

Record of Preparation and Disposition of Remains (Within CONUS), DD FORM 2063, OMB CONTROL NUMBER (0702–0014)

Needs and Uses: DD FORM 2063 provides technical information regarding preparation and condition of remains. Information is used to substantiate claims and provide information for inquiries into death cases.

Affected Public: Individuals or households.

Annual Burden Hours: 403.

Number of Respondents: 1,613.

Responses per Respondents: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Deputy Chief of Staff for Personnel, 300 Army Pentagon, DAPE–ZXI–IC (ATTN: Phyllis Miller) Washington, DC 20310–0300. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION: To request more information on this proposed information collection or to obtain a copy of the proposed association collection instruments, please write to the above address or call the Department of the Army Reports Clearance Officer at (703) 614–0454.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–29415 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Proposed Information Collection Available for Public Comment; Request for Payment of Funeral

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Title 10, USC Sections 1485 & 1486 provides the next-of-kin of deceased military personnel a monetary reimbursement of certain costs incurred by the next-of-kin in the interment of the deceased.

Title, Applicable Forms, and OMB Control Number

Disposition of Remains—Reimbursable Basis, Request for Payment of Funeral and/or Interment Expenses, DD FORMS 2065 AND DD

FORM 1375, OMB CONTROL NUMBER (0704–0030).

Needs and Uses: DD FORM 2065 records disposition instructions and costs for preparation and final disposition of remains. DD FORM 1375 provides next-of-kin an instrument to apply for reimbursement of funeral/interment expenses. This information is used to adjudicate claims for reimbursement of these expenses.

Affected Public: Individuals or households.

Annual Burden Hours: 208.

Number of Respondents: 1,140.

Responses per Respondents: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Deputy Chief of Staff for Personnel, 300 Army Pentagon, DAPE–ZXI–IC (ATTN: Phyllis Miller) Washington, DC 20310–0300. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Department of the Army Reports Clearance Officer at (703) 614–0454.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–29416 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Scientific Conference on Frozen Platelets and Platelet Substitutes in Transfusion Medicine

AGENCY: Walter Reed Army Institute of Research, Washington, DC.

ACTION: Notice of open meeting.

SUMMARY: This conference is sponsored by the Medical Research Combat Casualty Care Program of the United States Army and Navy, with the participation of the Center for Biologics Evaluation and Research, Food and Drug Administration, and the Blood Resources Program of the National Heart, Lung and Blood Institute, NIH.

The purpose of the two-day meeting will be to review frozen platelet preparations as well as platelet substitutes that are in development for hospital and field use. Topics to be discussed include appropriate in vitro studies to assess activity as well as preclinical and clinical trails to validate efficacy. Poster preparations are welcome.

All individuals wishing to present posters must register and provide a 250 word abstract no later than January 20, 1996. All others should register by February 1, 1996. The registration fee is $100 payable to SAIC. Registration forms and initial agenda are available from SAIC, ATTN: Ms. Lea Ann Lehmann, 5340 Spectrum Drive, Suite N, Frederick, Maryland 21701 (FAX 301–698–6188).

Date of Meeting: March 7, 1996 to March 8, 1996.

Place: Uniformed Services University of the Health Sciences (main auditorium), 4301 Jones Bridge Road, Bethesda, MD.

Time: 8 a.m. to 9 p.m., March 7 and 8:30 a.m. to 11:30 a.m., March 8.

FOR FURTHER INFORMATION CONTACT: Barbara Alving, M.D., Colonel Chief, Department of Hematology and Vascular Biology, Walter Reed Army Institute of Research, Washington, DC 20307–5100 (TEL 301–782–3385, FAX 202–782–0703).

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–29411 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 27 & 28 November 1995.

Time of Meeting: 1400–1800, 27 November 1995, 0800–1700, 28 November 1995.

Place: Ft. Leavenworth, Kansas.

Agenda

The Army Science Board (ASB) TRADOC Panel on ''Operational Architecture'' will meet for briefings provided by Army representatives from the TRADOC Program Integration Office—Army Battle Command Systems (TPIO-ABCS). This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting.

For further information, please contact Michelle Diaz at (703) 695–0781.

Jacqueline Y. Ladd,

Database Manager, Acting Administrative Officer, Army Science Board.

[FR Doc. 95–29472 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 28, 29 & 30 November 1995.

Time of Meeting: 0830–1730, 28 November 1995, 0815–1630, 29 November 1995, 0815–1130, 30 November 1995.

Place: WRAIR/NMRI, 29 November 1995, USUHS, 29 & 30 November 1995.

Agenda

The Army Science Board (ASB) Personnel and Medical Issue Group will meet for continuing discussions on the design and staffing required to support the medical research, development, test and evaluation (RDTE) programs of the proposed Army and Navy consolidated laboratory management organization currently proposed to be called the Armed Forces Medical Research Development Agency (AFMRDA). These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call Michelle Diaz at (703) 695–0781.

Jacqueline Y. Ladd,

Database Manager, Acting Administrative Officer, Army Science Board.

[FR Doc. 95–29473 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: November 29, 1995.

Time of Meeting: 0900–1200.

Place: BDM HQ-McLean, VA.

Agenda

The Army Science Board's Acquisition sub-panel to ''Reengineering the Acquisition and Modernization Processes of the Institutional Army'' will meet to discuss the current status of Army Modernization and to discuss plans to reengineer the Acquisition and Modernization processes. Discussion will include the current shortfalls in modernization and the attendant vulnerabilities to the U.S. Army. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this morning. For further information, please contact Michelle Diaz at (703) 695–0781.

Jacqueline Y. Ladd,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–29374 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning a Bacterial Delivery System

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application Serial No. 08/523,855 entitled ''Bacterial Delivery System'' and filed September 6, 1995. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065 or telefax (301) 619–7714.

SUPPLEMENTARY INFORMATION: This invention describes a bacterial delivery system for the delivery of DNA and antigens to cells. Said system consists of an attenuated bacterial vector which enters mammalian cells and ruptures, thus delivering functional plasmid DNA and antigens into the cell cytoplasm. This *Shigella* vector was designed to deliver DNA to colonic surfaces, thus opening the possibility of oral and other mucosal DNA immunization and gene therapy strategies. The attentuated *Shigella* is also useful as a vaccine for reducing disease symptoms caused by *Shigella*.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–29413 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Encapsulated High-Concentration Lipid A Composition as Immunogenic Agents

AGENCY: U.S. Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application Serial No. 07/601,090 filed October 22, 1990 and entitled ''Encapsulated High-Concentration Lipid A Compositions as Immunogenic Agents to Produce Human Antibodies to Prevent or Treat Gram-Negative Bacterial Infections''. This Notice also announces the withdrawal of the intent to grant exclusive patent license to Univax Biologics, Inc. as indicated in the Federal Register, Volume 57, Number 99, page 21648 (May 21, 1992). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065 or telefax (301) 619–7714.

SUPPLEMENTARY INFORMATION: This invention is directed to the production of antibodies against lipid A by using encapsulating slow-releasing delivery materials or devices containing concentrations of lipid A that are greater than could be given safely to humans in the absence of said materials or devices. The antibodies to lipid A can be used for binding the antibodies to the lipid A that is present in the lipopolysaccharide that coats the surface of the Gram-negative bacteria.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–29414 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of Fuze Technology

AGENCY: Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or non-exclusive licenses under patent application Serial Number 177,493, filed January 5, 1994, Docket # DAR 8–93, by Michael Tari, Louis J. Adimari, and Frank Diorio entitled ''Self-Destruct Fuze for Improved Conventional Munitions'', now U.S. patent number 5,387,257, issued on February 7, 1995. Licenses shall comply with 35 USC 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, telephone number (201) 724–6950.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 30 days from the date of publication of this notice in the Federal Register.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–29412 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of Training Ammunition Technology

AGENCY: Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or non-exclusive licenses under patent application Serial Number 08/273,032 filed July 7, 1994, Docket # DAR 6–94, by Anthony Farina and Mark Young, entitled ''Training Projectile''. Licenses shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, telephone number (201) 724–6950.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 30 days from the date of publication of this notice in the Federal Register.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–29410 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Notice of Availability of Surplus Land and Buildings in Accordance With Public Law 103–421 Located at Defense Personnel Support Center, Philadelphia, PA

AGENCY: Corps of Engineers, DOD.

ACTION: Public notice of availability.

SUMMARY: The Department of the Army, in accordance with the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, announces that approximately 77.5 acres containing the buildings listed below, at the Defense Personnel Support Center have been determined surplus. The Center is located in south Philadelphia in the block bordered by Oregon Avenue on the North, 20th Street on the East, and Schuylkill Expressway on the South and West. The property is scheduled for closure by July 2, 1999. State and local governments, representatives of the homeless, and other interested parties should be aware that the outreach screening process whereby McKinney Homeless providers and state and local governmental agencies express their interest in the property will be conducted by Lori Flynn of the Philadelphia Industrial Development Corporation, Office of Defense Conversion, 2600 Centre Square West, 1500 Market Street, Philadelphia, PA 19102, telephone: 215–496–8167. The screening process will commence upon the publishing of notices in local newspapers, currently scheduled for early 1996.

4 Office Buildigns—Totaling 808,200 SF
7 Storage Buildings—Totaling 1,561,000 SF
9 Other Type Buildings—Totaling 294,100 SF

FOR FURTHER INFORMATION CONTACT: Ms. Lori Flynn at the above address and phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–29434 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–41–M

Intent To Prepare A Draft Environmental Impact Statement (DEIS) for A Multiuser Disposal Site Program for Contaminated Sediments in Puget Sound, WA

ACTION: Notice of intent to prepare a draft EIS.

SUMMARY: The following are joint lead agencies for the combined Federal and State Programmatic Environmental Impact Statement (EIS): Federal (NEPA): Seattle District, U.S. Army Corps of Engineers, Department of Defense; State (SEPA): Washington Department of Ecology and Washington Department of Natural Resources.

The U.S. Army Corps of Engineers, the Washington Department of Ecology, and the Washington Department of Natural Resources, intend to prepare a joint federal-state Programmatic Environmental Impact Statement under the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA). The EIS will evaluate disposal alternatives for contaminated sediments from Puget Sound. Disposal alternatives that will be evaluated include: (1) Level bottom capping and confined aquatic disposal, (2) nearshore confined disposal, (3) upland disposal, (4) disposal in solid waste landfills, and (5) multiuser access to larger fill projects.

The need for disposal of contaminated sediments comes from (1) dredging of federal and non-federal navigation channels, (2) waterfront development projects, (3) environmental cleanup projects directed through federal or state enforcement actions, and (4) projects with restoration of aquatic habitat as their primary purpose. Preliminary investigations estimate there are currently about 20–30 million cubic yards of contaminated sediment in Puget Sound, primarily in the urbanized bays.

The current practice of resolving contaminated dredged material issues is on a project-by-project basis, resulting in a greater number of smaller confined disposal sites that must be monitored and accounted for, rather than a few large sites. Because of difficulties with disposal, the discovery of contaminated sediments often forces project proponents to redesign or abandon a project to avoid dredging. This avoidance does not resolve the ongoing adverse effects of the contaminated sediments remaining in the environment, and it limits the potential economic development of the contaminated waterfront site.

Development of an effective solution for the safe disposal and containment of contaminated sediments from multiple sources in Puget Sound is needed. A process to establish, implement, and operate a system of multiuser confined disposal sites, and criteria to site the facilities, will be developed as part of the EIS. Siting criteria will include biological and physical factors, as well as proximity to existing sources of contamination. Using siting criteria and the evaluation of feasible disposal alternatives, zones of siting feasibility in Puget Sound, where multiuser confined disposal sites could be located, will be identified in the EIS. Once zones of feasible sites are determined, site-specific NEPA/SEPA compliance evaluations for all potential sites will be tiered from the completed programmatic EIS.

DATES: The lead and cooperating agencies invite and encourage agencies and the public to provide written comments on the proposed programmatic EIS throughout the scoping process to ensure that all relevant environmental issues are considered. Persons or organizations wishing to submit scoping comments should do so no later than January 21, 1996.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Steve Babcock, Seattle District, U.S. Army Corps of Engineers, Planning Branch, 4735 E. Marginal Way S., Seattle, Washington 98124–3755, Telephone (206) 764–3651 or Mr. Keith Phillips, Washington Department of Ecology, Environmental Investigation and Lab Service Program, P.O. Box 47710, Olympia, Washington 98504–7710 Telephone (360) 407–6699 or Mr. Timothy Goodman, Aquatic Resources Division, Washington Department of Natural Resources, P.O. Box 47000, Olympia, Washington 98504, Telephone (360) 902–1057.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The proposed action is to evaluate alternatives for siting one or more contaminated sediment disposal facilities in Puget Sound, Washington. This evaluation will be part of an effort to develop a federal/state program to establish one or more multiuser disposal siting processes.

Puget Sound is an estuary of 2,500 square miles. There are 34 public port districts along Puget Sound, 54 miles of federal navigation channels, 10 miles of port terminal ship berths along these channels, and more than 200 small boat harbors that require periodic dredging. There is currently a lack of capacity for disposal of contaminated sediments derived from (1) dredging of federal and non-federal navigation channels, (2) waterfront development projects, (3) environmental cleanup projects directed through federal or state enforcement actions, and (4) projects with restoration of aquatic habitat as their primary purpose. The lack of suitable disposal alternatives is a major obstacle to effective improvement and maintenance of navigation and the most substantial impediment to the progress of

environmental cleanup and habitat restoration programs. The lack of predictable and cost-effective disposal options for contaminated sediments leads to cancellation or delay of waterfront development projects, resulting in adverse economic effects.

Based on preliminary investigations of 20 percent of Puget Sound, Ecology estimates that the areal extent of known sediment contamination is nearly 88 million square feet. Assuming all of the material is dredged to a depth of four feet, this area represents roughly 20–30 million cubic yards of contaminated dredged material. Over the next 20 years, an estimated 35 million cubic yards will be dredged for navigation purposes by the Corps and Navy, port districts and the private sector, of which as much as 10 million cubic yards may require confined disposal. In addition to navigation dredging projects, a large volume of contaminated sediment may be generated by future cleanup actions under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and state Model Toxics Control Act (MTCA). A preliminary estimate of future contaminated sediment volumes from these cleanup actions in Puget Sound is in the range of 20 to 30 million cubic yards.

2. Alternatives

The alternatives which will be evaluated in the EIS are:

a. No action;

b. Level bottom capping and confined aquatic disposal;

c. Nearshore confined disposal;

d. Upland disposal;

e. Disposal in solid waste landfills; and

f. Multiuser access to larger fill projects.

These are preliminary alternatives; during the scoping process, the public may provide additional alternatives to be considered.

No action—This alternative would continue the practice of resolving contaminated dredged material issues on a project-by-project basis. This practice is time-consuming, unpredictable, and expensive for the regulated community, the regulatory agencies, and the public. It also results in a greater number of smaller confined disposal sites that must be monitored and accounted for rather than a few large sites. Because of difficulties with disposal, the discovery of contaminated sediments will often force project proponents to redesign or abandon a project to avoid dredging. This avoidance does not resolve the ongoing adverse effects of the contaminated sediments on the environment, and it limits the potential economic development of the contaminated waterfront site.

Level bottom capping and confined aquatic disposal—Both of these disposal options involve consolidating contaminated sediments from numerous dredging projects at one location and then covering them with a cap layer of clean material. The clean cap layer isolates the marine environment from the chemicals of concern in the contaminated sediment. Level bottom capping is the placement of contaminated sediment in a mounded configuration with the clean cap layer on top. Confined aquatic disposal uses natural or excavated depressions for placement of the contaminated material, or places the material behind constructed submerged dikes for containment. In both cases, the contaminated material is covered with a clean cap layer.

Nearshre confined disposal—A nearshore confined disposal facility is a diked disposal site adjacent to land in the intertidal and/or subtidal zone. The confinement dikes enclose the disposal site from adjacent water surfaces and isolate dredged material from adjacent waters during placement. Contaminated material would be added to a diked cell to a specific elevation and then capped with clean material. The site would likely be developed in phases, and cells would be filled and capped in stages over the life of the facility. Nearshore sites are either finished to grade to allow beneficial use of the site after completion, or the finished grade of the clean cap layer is located in the intertidal zone to allow planting of aquatic vegetation and habitat restoration.

Upland disposal—This alternative includes the placement of contaminated material in an area not influenced by tidal waters. The upland site would be diked to confine the dredged material and capped with a layer of clean material at completion of the fill. The site would be developed in stages and would be filled and closed serially over the life of the facility. Design standards for an upland site would include liners, monitoring of leachate seeping into soils, groundwater monitoring, and a leachate collection and treatment system.

Disposal in solid waste landfills—Potential disposal of contaminated sediments in solid waste landfills would be evaluated under this alternative. Municipal landfills are short on capacity and subject to water content restrictions. Demolition debris landfills have been used in the past for disposal of contaminated sediments, but this practice is ending as these sites are closed or subject to additional environmental controls. An initial State survey of landfill agencies concluded that use of contaminated material as landfill cover would not address the needed capacity, and the facilities were not planned to accommodate the volume or substantial regulatory, technical, or cost issues associated with managing contaminated sediments.

Multiuser access to larger fill projects—This alternative examines the option of providing multiuser access to large fill sites constructed and/or maintained by proponents of waterfront activities. Proponents of larger fill projects have been reluctant to provide multiuser access to their sites because of lost capacity for their own projects, extended timeframes for site development and closure, and inherited liability.

3. Scoping and Public Involvement

Public involvement will be sought during the scoping process and throughout the course of the project in accordance with NEPA/SEPA procedures. A public involvement plan will be developed in early 1996. As part of the scoping process, all affected Federal, state, and local agencies, Indian Tribes, general public, and other interested private organizations, including environmental interest groups, are invited to comment on the scope of the EIS.

To date, the following areas have been identified for analysis in the programmatic EIS:

1. Water quality.
2. Sediment quality.
3. Fish and wildlife habitat.
4. Shoreline and land use.
5. Recreation.
6. Transportation.
7. Human Health.

Two scoping meetings are scheduled: December 13, 1995, at the World Trade Center in Tacoma from 7 to 9 p.m.; and December 14, 1995, at the Port of Everett Commissioner Hearing Room 7 to 9 p.m. Public workshops are tentatively scheduled to precede these scoping meetings from 6 to 7 p.m. Ongoing communication with agencies, Native American tribes, public interest groups, and interested citizens will take place throughout the project through the use of public workshops, newsletters, and mailings.

4. Schedule

The scoping summary document is scheduled to be available in June 1996, and the Draft Programmatic Environmental Impact Statement is

tentatively scheduled to be available for review in 1997.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–29433 Filed 12–1–95; 8:45 am]

BILLING CODE 3710–ER–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96–2–20–001]

Algonquin Gas Transmission company; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1995.

Take notice that on November 21, 1995, Algonquin Gas Transmission Company (Algonquin) tendered the instant filing in compliance with the Commission's letter order issued in Docket No. TM96–2–20–000 on November 9, 1995.

Algonquin states that the purpose of this filing is to provide an explanation and workpaper to support the estimated throughput figures shown in Appendix C of Algonquin's October 12, 1995, filing in Docket No. TM96–2–20–000. The October 12, 1995, filing revised Algonquin's fuel reimbursement percentages and the annual calculation of the fuel reimbursement quantity deferral allocation.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR Section 385.211 of the Commission's Rules of Practice and Procedure. Under Section 154.209, all such protests should be filed on or before December 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29397 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–5–001]

Carnegie Interstate Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

November 28, 1995.

Take notice that on November 17, 1995, Carnegie Interstate Pipeline Company (CIPCO) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to become effective on November 1, 1995:

Fourth Revised Sheet No. 7

CIPCO states that this filing revises its Annual Transportation Cost Rate (TCR) filing made on October 2, 1995, which the Commission accepted and suspended, effective November 1, 1995, in a letter order issued October 26, 1995. In this filing, CIPCO has recalculated its TCR to reflect its recent settlement of litigation with its customer, New Jersey Natural Gas Company as a result of that settlement the unrecovered TCR costs attributable to New Jersey Natural Gas Company are restored to CIPCO's Unrecovered Transportation Cost subaccount. In addition CIPCO has recalculated its TCR to utilize the actual billing determinants in effect as of November 1, 1995, as required by its tariff. The filing reflects a TCR of $1.1162, compared to the TCR of $1.5249 set forth in the October 2, 1995 filing.

CIPCO states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Under Section 154.209, all such protests should be filed on or before November 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29399 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–173–007]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1995.

Take notice that on November 21, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets effective September 1, 1995:

2nd Sub First Revised Sheet No. 1901

Koch Gateway states that the above referenced tariff sheet is submitted in compliance with the November 9, 1995, Commission's order in this proceeding. Pursuant to the Commission's order, Koch Gateway's revised tariff language states that, if Koch Gateway has received prior authorization from a shipper, the shipper signature is not required for Predetermined Allocation Agreements submitted after gas flow.

Koch Gateway also states that the tariff sheets are being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1A, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. Under Section 154.209, all such protests should be filed on or before December 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29403 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–301–004]

Stingray Pipeline Company; Notice of Compliance Filing

November 28, 1995.

Take notice that on November 22, 1995, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), revised tariff sheets to be effective December 1, 1995.

Stingray states that the purpose of the filing is to comply with Article VII of the Stipulation and Agreement (Settlement) approved by Federal Energy Regulatory Commission (Commission) letter order issued October 11, 1995 in Docket Nos. RP94–301–000 and RP94–301–003. The filed tariff sheets reflect the rates as set out on Appendix A of the Settlement to be effective December 1, 1995, and revisions to Sections 10 and 11 of the General Terms and Conditions of Stingray's Tariff as set forth in Article V of the Settlement. Stingray has also made conforming changes to its Tariff to reflect a thermal billing basis consistent with the thermal content which underlies the settlement rates.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective December 1, 1995.

Stingray states that copies of its filing were served on all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Under Section 154.209, all such protests should be filed on or before December 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29405 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–47–008]

Texas Gas Transmission Corporation; Notice of Filing

November 28, 1995.

Take notice that on November 15, 1995, Texas Gas Transmission Corporation (Texas Gas) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] Texas Gas states that it is revising its standards to incorporate the changes required by the Commission's October 31, 1995, Order on Standards of Conduct.[3]

Texas Gas states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29408 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–375–003 and RP95–215–002]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1995.

Take notice that on November 21, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of November 21, 1995:

First Revised Sheet No. 222
Second Revised Sheet No. 223
Second Revised Sheet No. 224
Second Revised Sheet No. 225
Second Revised Sheet No. 226
First Revised Sheet No. 226A
First Revised Sheet No. 226B
First Revised Sheet No. 226C
First Revised Sheet No. 226D

Texas Gas states that the revised tariff sheets are being filed to institute conditions under Article IV of a Stipulation and Agreement of Settlement (Settlement) filed on August 21, 1995, and approved by the Commission by letter order dated October 11, 1995. The Settlement resolves all issues related to the termination of Texas Gas's purchased gas adjustment (PGA) clause and the allocation, direct billing and recovery of Texas Gas's Account No. 191 balances arising out of the above captioned proceeding.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected customers, interested state commissions, and those who are parties on the official service lists of the referenced dockets listed above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 Commission's Rules and Regulations. Under Section 154.209, all such protests should be filed on or before December 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29404 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–454–001]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 28 1995.

Take notice that on November 16, 1995, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective November 14, 1995

15th Revised Sheet No. 90A
6th Revised Sheet No. 91

On September 29, 1995, Transwestern made a filing pursuant to Section 25.6, Interest Rate Adjustment Filings, of the General Terms and Conditions of Transwestern's FERC Gas Tariff, and in accordance with the Stipulation and Agreements in Docket Nos. RP93–56 (TCR–11), RP93–86 (TCR–12), RP93–139 (TCR–13) and RP94–60 (TCR–14) (TCR Settlements). In the filing Transwestern proposed to adjust TCR Surcharge C (Nos. 11–13) and TCR Surcharging C (No. 14) to: (1) True-up for the actual quarterly interest rates published by the Commission for the

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC*, D.C. Cir. No. 94–1745 (December 14, 1994).

[3] 73 FERC ¶ 61,144 (1995).

period October 1, 1994 through September 30, 1995; and (2) estimate the interest expense for the upcoming period of October 1, 1995 through October 31, 1996.

Transwestern states that the Public Utilities Commission of the State of California (CPUC) and Pacific Gas and Electric Company (PG&E) both filed timely motions to intervene and requests for clarification. CPUC stated that it believed Transwestern calculated the interest adjustment correctly but that Section 25.6 of Transwestern's tariff references an earlier period of Transwestern's TCR filings, beginning November 1, 1989, and limits such adjustments to three filings. CPUC acknowledged that the TCR Surcharge C interest rate filing is consistent with Transwestern's previous TCR Settlements but was not clear whether Tranwestern's tariff needs to be revised for clarification purposes. In that regard, the CPUC recommended that Section 25.6 of Transwestern's tariff be revised to delete the word ''three.'' PG&E also sought clarification of the same tariff provisions.

On October 30, 1995, FERC issued a letter order (Order) in this docket, accepting Transwestern's filing and directing Transwestern to file tariff language to revise Section 25.6, consistent with its underlying TCR Settlements.

Transwestern states that in compliance with such Order, rather than simply deleting the word ''three'' from Section 25.6 it has separated Section 25.6 into two sections. First, the existing language in Section 25.6 has been modified to indicate that such language refers only to TCR B. Second, a new subsection (b) has been added that applies the interest rate adjustment mechanism to TCR Surcharge C, using language consistent with TCR Surcharge B. Transwestern believes these changes will eliminate any confusion the previous tariff language may have caused.

Transwestern states that due to an inadvertent administrative oversight, it is making this filing two days after the due date specified in the Order. Transwestern apologizes for any inconveniences this late filing may have caused the Commission or to the parties in this proceeding.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. Under Section 154.209, all such protests should be filed on or before November 28, 1995. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29400 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–449–001]

Trunkline Gas Company; Notice of Compliance Filing

November 28, 1995.

Take notice that on November 22, 1995, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets proposed to be effective October 29, 1995:

Sub First Revised Sheet No. 154
Sub First Revised Sheet No. 170

Trunkline states that this filing is being made in compliance with the Commission's Order Rejecting Tariff Sheets and Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing a Technical Conference issued October 25, 1995 and the November 8, 1995 Errata Notice in Docket No. RP95–449–000.

Trunkline states that copies of this filing are being mailed to all parties to this proceeding and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Under Section 154.209, all such protests should be filed on or before December 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29401 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–447–001 and RP89–183–059]

Williams Natural Gas Company; Notice of Proposed Change in FERC Gas Tariff

November 28, 1995.

Take notice that on November 22, 1995, Williams Natural Gas Company (WNG) made a filing in compliance with Commission order dated October 25, 1995 in Docket No. RP95–447 and RP89–183.

WNG states that this filing contains a response to the Missouri Public Service Commission's assertion that the filing should reflect the effect of deferred tax reserves and a breakdown of cumulative balances on which interest is calculated showing whether it offsets the balance for the deferred tax reserves. Attached to the filing are schedules showing the calculation of interest on the amounts WNG proposes to direct bill in this docket. WNG did not reduce the principal amounts by deferred income taxes for purposes of calculating interest.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the dockets referenced above and on interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Under Section 154.209, all such protests should be filed on or before December 4, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29402 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–121–002]

WestGas Interstate, Inc.; Notice of Filing of Refund Report

November 28, 1995.

Take notice that on November 17, 1995, WestGas Interstate, Inc. (WGI) filed a refund report in Docket No. TM96–1–121–000. WGI states that the filing and refunds were made in compliance with the Letter Order issued

October 6, 1995, in the above referenced proceeding.

WGI stats that the report summarizes WGI's refund of Annual Charge Adjustment (ACA) surcharges over-collected from its customers, as required by the October 6, 1995 Letter Order. WGI further states that such refunds were issued on October 31, 1995.

WGI states that a copy of its filing was served on each of its jurisdictional customers and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. Under Section 154.209, all such protests should be filed on or before November 29, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29398 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–296–009]

Williams Natural Gas Company; Notice of Revised Refund Report

November 28, 1995.

Take notice that on November 15, 1995, Williams Natural Gas Company (WNG) tendered for filing a revised refund report in compliance with Commission order issued October 16, 1995 in Docket No. RP94–296–004, et al.

WNG states that the refund report reflects refunds as they would have been made if the ''CIG T&E adjustment'' of $5,144,697 had been included in WNG's unrecovered purchased gas cost, as permitted by the October 16 order.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Under Section 154.209, all such protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29406 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–296–008]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1995.

Take notice that on November 15, 1995, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

To Be Effective September 19, 1994

Second Substitute Third Revised Sheet No. 9
Second Substitute Second Revised Sheet No. 10

To Be Effective March 31, 1995

Third Substitute Fourth Revised Sheet No. 9
Third Substitute Third Revised Sheet No. 10

WNG states that this filing is being made in compliance with Commission order issued October 16, 1995 in Docket No. RP94–296–004, et al. WNG was directed to file revisions to conform with the order within 30 days of the issuance of the order. The tendered tariff sheets reflect an increase in the amount of unrecovered purchased gas costs of approximately $5.1 million.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Under Section 154.209, all such protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–20407 Filed 12–1–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5338–2]

Clean Air Scientific Advisory Committee Science Advisory Board; Emergency Notification of Public Advisory Committee Meeting

December 14–15, 1995.

This is an Emergency Notification of a Federal Advisory Committee Meeting. This notice is being published less than fifteen calendar days prior to the date of the announced meeting due to delays caused by Federal budgetary exigencies.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on December 14 and 15, 1995 at the Omni Europa Hotel, One Europa Drive, Chapel Hill, North Carolina 27514. The hotel phone number is 919–968–4900. The meeting will begin at 8:30 a.m. and end no later than 5 p.m. on both days (times noted are Eastern Time). The meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come first-serve basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office—information concerning document availability from the relevant Program area is included below.

PURPOSE OF THE MEETING: At this meeting, the Committee will review and provide advice to EPA on the draft criteria document for particulate matter (*Air Quality Criteria for Particulate Matter*) and the draft staff paper for particulate matter (*Review of National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information*). The purpose of the staff paper is to evaluate and interpret the most relevant scientific and technical information reviewed in the air quality criteria document in order to better specify the critical elements which the EPA staff believes should be considered in any possible revisions to the national ambient air quality standards (NAAQS) for particulate matter. This document is intended to bridge the gap between the

scientific review contained in the criteria document and the judgments required of the Administrator in setting a NAAQS. The Committee will consider presentations from Agency staff and the interested public prior to making recommendations to the Administrator.

AVAILABILITY OF REVIEW MATERIALS: (a) Air Quality Criteria for Particulate Matter (The Draft Criteria Document)—For the benefit of interested parties, an electronic version of the revised draft Particulate Matter Criteria materials (EPA 600/BP–95/001 a–c) will be available on the Agency's TTN Bulletin Board (reachable via modem on (919) 541–5742). To access the TTN Bulletin Board, a modem and communications software will be necessary. The terminal emulation needs to be VT100, VT102 or ANSI. The following parameters on the communications software are required: Data bits—8; Parity—N; and Stop Bits—1. The document will be located under the Clean Air Act Amendments BBS under Title I, Policy and Guidance. For INTERNET access—go to Telenet Site and enter TTNBBS.RTPNC.EPA.GOV *or* IP Number 134.67.234.17. For INTERNET, we do not have FTP to download documents. Requester must have Kermit Protocol Program or pay a fee for SLIP account for downloading capabilities. Once in the TTN Bulletin Board, you must register (there is no charge for this). At the prompt for name, you should enter your name; at the prompt for password, make up a password (8 characters); select registration and enter registration information including company name. Then follow instructions.

For assistance in assessing the draft materials, please contact the Help Desk at (919) 541–5384 in Research Triangle Park, NC. Copies of figures for some chapters (e.g., Chapter 6) may not be available by this electronic bulletin board, but can be obtained by contacting Ms. Diane Ray at the numbers given below. Hard copies of the revised materials will be available in the Air Docket at EPA Headquarters, 401 M Street, Washington, DC, and in each of the EPA Regional Office Libraries. To arrange for copies of specific figures/graphs, not adequately reproduced with the TTN Bulletin Board, contact Ms. Diane Ray (phone (919) 541–3637; fax (919) 541–1818). For information regarding locations and office hours for the EPA Air Docket or Regional Office Libraries, please consult 60 FR 20085, April 24, 1995. Full copies of all PM Criteria Document draft chapters will also be available for public inspection at the December 14–15, 1995 CASAC meeting. The Office of Research and Development (ORD) will accept written comments from the public on the revised draft PM Criteria Document through December 22, 1995. Any public comments on the revised draft PM Criteria Document should be submitted in writing to: Diane Ray, NCEA/RTP (MD–52), U.S. EPA, 3200 Highway 5400, Research Triangle Park, NC 27711.

(b) Review of National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (The Draft Staff Paper)—Single copies of the draft particulate matter staff paper may be obtained from Ms. Tricia Crabtree, Office of Air Quality Planning and Standards (MD–15), U.S. EPA, Research Triangle Park, NC 27711. Ms. Crabtree can also be reached by telephone at (919) 541–5655 or by fax at (919) 541–0237. The Office of Air Quality Planning and Standards (OAQPS) will accept written comments from the public on all aspects of their revised external review draft particulate matter staff paper through December 22, 1995. Written comments should be sent to Ms. Trish Koman at the previously stated address.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Official, Clean Air Scientific Advisory Committee, Science Advisory Board (1400F), U.S. EPA, 401 M Street, SW., Washington, DC 20460; telephone/voice mail at (202) 260–5133; fax at (202) 260–7118; or via the INTERNET at FLAAK.ROBERT@EPAMAIL.EPA.GOV. Those individuals requiring a copy of the draft Agenda should contact Ms. Connie Valentine at (202) 260–6552 or by FAX at (202) 260–7118 or via the INTERNET at VALENTINE.CONNIE@EPAMAIL.EPA.GOV. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available by contacting Ms. Lori Gross at (202) 260–8414.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Friday, December 8, 1995 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself.

PROVIDING ORAL OR WRITTEN COMMENTS AT SAB MEETINGS: The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment are limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments of any length (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of its meeting, unless other publicly announced arrangements have been made.

Dated: November 28, 1995.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 95–29452 Filed 11–29–95; 1:12 pm]

BILLING CODE 6560–50–P

[OPP–00412; FRL–4962–8]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on Monday, December 4, 1995, and ending on Tuesday, December 5, 1995. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG will meet on Monday, December 4, 1995, from 8:30 a.m. to 5 p.m., and Tuesday, December 5, 1995, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at: The DoubleTree Hotel, National Airport—Crystal City, 300 Army-Navy Drive, Arlington, Virginia 22202, 703-892-4100.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1101, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-5306, e-mail: howard.shirley@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG includes the following:

1. Regional and SFIREG committee reports.
2. Discussion of old and new issue papers.
3. Update on acetochlor registration partnership.
4. Update on genetically-engineered plant pesticides registration issues.
5. Update on bulk repackaging.
6. Office of Enforcement and Compliance Assurance Status Report.
7. Discussion of State involvement with pesticide labeling.
8. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: November 28, 1995.

William L. Jordan,

Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 95–29456 Filed 11–29–95; 3:04 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission, Comments Requested

November 22, 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 2, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St. NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0444.

Title: Station Construction/ Operational Status Inquiry.

Form No.: FCC 800A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; Small businesses or organizations; Individuals or households.

Number of Respondents: 11,500.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 11,500 hours.

Needs and Uses: The Commission requests this collection of information as a method for licensees to provide information to verify a station has been placed into operation and to notify the Commission of the actual number of mobile units placed in operation after license grant. From this data, the Commission is able to determine full capacity channel loading, making frequencies available for assignment and modifying or cancelling licenses. The data collected ensures licensees are not authorized for more mobiles than they are actually using. The data collected is required by the Communications Act and FCC Rules 90.155, 90.313, 90.495, 90.496, 90.631, 90.633, 90.651, 90.725 and 90.737. The entities identified in the current 800A letter , such as trunked, conventional, etc., have been re-named as CMRS and PMRS. The current 800A letter requests a breakdown in the types of mobiles and control stations, while the proposed 800A letter asks for a total number of mobiles and the number of parties affiliated with, controlled by, or related to the provider. The number of responses and estimated burden remains unchanged.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–29367 Filed 12–1–95; 8:45 am]

BILLING CODE 6712–01–F

[Report No. 2114]

Petition for Reconsideration of Actions in Rulemaking Proceedings

November 28, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed December 19, 1995. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:
Tariff Filing Requirements for Nondominant Common Carriers (CC Docket No. 93–36)
Number of Petitions Filed: 2

Subject:
Amendment of the Amateur Service Rules to Implement a Vanity Call Sign System (PR Docket No. 93–305)
Number of Petitions Filed: 4

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–29368 Filed 12–1–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons

should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011479–001.
Title: SERPAC Service Agreement.
Parties:
Compania Sudamericana de Vapores, S.A.
Flota Mercante Grancolombiana, S.A.
Hamburg Sudamerikanische Dampschifffahrts Gesellschaft Eggert & Amsinck d/b/a Columbus Line

Synopsis: The proposed amendment provides that the Agreement shall not terminate before December 31, 1996.

Dated: November 29, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–29451 Filed 12–1–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Caisse Nationale de Credit Agricole, S.A.; Notice of Proposal to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has given notice under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether commencement of the activity can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Caisse Nationale de Credit Agricole S.A., Paris, France; to engage *de novo* through its subsidiaries Credit Agricole Lazard Financial Products Bank, London, England, and CAL FP (US), Inc., New York, New York, in providing investment advisory services, pursuant to §§ 225.25(b)(4), 225.25(b)(15)(i), and (ii) of the Board's Regulation Y; acting as an agent in the private placement of all types of securities, including providing related advisory services, pursuant to *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989); providing riskless principal brokerage services, pursuant to *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989); acting as broker or agent with respect to interest rate and currency swaps and swap derivative products relating thereto, pursuant to *Swiss Bank Corporation*, 81 Fed. Res. Bull. 185 (1995); acting as broker or agent with respect to swaps and swap derivative products, and over-the-counter option transactions, linked to certain commodities, stock, bond, or commodity indices, or a hybrid of interest rates and such commodities or indices, a specially tailored basket of securities selected by the parties, or single equity securities, pursuant to *Swiss Bank Corporation*, 81 Fed. Res. Bull. 185 (1995); providing financial and transactional advice regarding the structuring and arranging of swaps, swap derivative products, and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions, pursuant to § 225.25(b)(4) of the Board's Regulation Y, and regarding commodity and index swap transactions, pursuant to *Swiss Bank Corporation*, 81 Fed. Res. Bull. 185 (1995); providing investment advice, including counsel, publication, written analyses and reports, with respect to the purchase and sale of futures contracts and options on futures contracts, pursuant to *Security Pacific Corp.*, 74 Fed. Res. Bull. 820 (1988); *J.P. Morgan & Company Incorporated*, 80 Fed. Res. Bull. 151 (1994); and *Swiss Bank Corporation*, 81 Fed. Res. Bull. 185 (1995); providing foreign exchange advisory and transactional services, including providing general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating, and managing their foreign exchange exposures; and transactional execution of foreign exchange by arranging for the execution of foreign exchange transactions, pursuant to § 225.25(b)(17) of the Board's Regulation Y; providing portfolio investment advice to customers; furnishing economic information and advice, general economic statistical forecasting services and industry studies; and providing advice, including rendering fairness opinions and providing evaluation services, in connection with mergers, acquisitions, divestitures, joint ventures, leverage buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financing and loan syndications), and conducting feasibility studies, pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, November 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29390 Filed 12–1–95; 8:45 am]

BILLING CODE 6210–01–F

Compagnie Financiere de Paribas; Application to Engage in Nonbanking Activities

Compagnie Financire de Paribas, Paris, France (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its indirect subsidiary, Sema Group, London, England (Company),[1] in providing software to mobile telephone network operators (client networks). The software would enroll new subscribers; identify subscribers and control access by subscribers to client networks; generate subscriber billing statements for and monitor subscriber payments to client networks; calculate and reconcile fund transfers between client networks; and monitor subscriber

[1] Applicant owns 50.1 percent of Financiere Sema, and France Telecom owns the remaining 49.9 percent. Financiere Sema in turns owns approximately 40 percent of the voting shares of Company.

usage patterns. Company currently provides these services to client networks outside the United States. Applicant proposes that Company would expand its operations to offer these services to client networks on a nationwide basis inside the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity that the Board, after due notice and opportunity for hearing, has determined by order or regulation to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks have generally provided the proposed services, that banks generally provide services that are operationally or functionally similar to the proposed services so as to equip them particularly well to provide the proposed services, or that banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (January 5, 1984); *Securities Industry Ass'n v. Board of Governors*, 468 U.S. 207, 210-11, n.5 (1984).

Applicant states that the Board previously has determined by regulation that providing certain data processing and data transmission services and facilities (including software) and providing access to such services and facilities by any technological means are closely related to banking for purposes of section 4(c)(8) of the BHC Act. In order to be found to be closely related to banking, the data to be handled must be ''financial, banking, or economic'' in nature, and such activities must be conducted within certain additional limitations established by the Board. *See* 12 CFR 225.25(b)(7). Applicant maintains that Company's proposed activities would relate primarily to financial, banking, or economic data, and would otherwise conform to Regulation Y.

Applicant also contends that, to the extent the proposed activities involve processing nonfinancial data, a bank holding company may engage in these activities as part of its offering of a larger package of data processing services, when processing nonfinancial data is an ''essential component'' of such package. *See Banc One Corporation*, 80 Fed. Res. Bull. 139 (1994). Applicant represents that Company's proposed activities with respect to nonfinancial data satisfy these criteria.

In order to approve the proposal, the Board also must determine that the proposed activities to be engaged in by Company are a proper incident to banking that ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. 1843(c)(8). Applicant contends that its proposal would produce public benefits that outweigh any potential adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington DC 20551, not later than December 18, 1995. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29393 Filed 12–1–95; 8:45 am]

BILLING CODE 6210–01–F

Dakotah Bankshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 29, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dakotah Bankshares, Inc., Fairmount, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank, Fairmount, North Dakota.

Board of Governors of the Federal Reserve System, November 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29391 Filed 12–1–95; 8:45 am]

BILLING CODE 6210–01–F

Dresdner Bank AG; Notice to Engage in Certain Nonbanking Activities

Dresdner Bank AG, Frankfurt, Germany (Dresdner), has provided notice, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section

225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to retain its interest in the United States operations of the Kleinwort Benson Group, plc, London, England. These operations include engaging in leasing activities, pursuant to 12 CFR 225.25(b)(5) through Parc Tec, Inc, and engaging in investment advisory activities, pursuant to 12 CFR 225.25(b)(4) through Kleinwort Benson Investment Management Americas, Inc., KB-LPL Holdings, Inc., and Kleinwort Benson U.S. Asset Managers, LLC, all of New York, New York. Dresdner also proposes to retain Kleinwort Benson (USA), Inc. (KB USA) and Kleinwort Benson North America, Inc. (KB NA), both of New York, New York, and to establish a section 20 subsidiary, Dresdner Kleinwort Benson, New York, New York (DKB), through the combination of KB NA, KB USA, and Dresdner Securities (USA), Inc., New York, New York (DSI), a wholly owned subsidiary of Dresdner that currently operates, pursuant to section 8(c) of the International Banking Act of 1978 (IBA). DKB would engage in the following activities:

1. Underwriting and dealing in debt and equity securities, other than interests in open-end investment companies;

2. Acting as agent in the private placement of all types of securities;

3. Acting as riskless principal in the purchase and sale of all types of securities on behalf of customers;

4. Providing full service securities brokerage services; and

5. Providing investment advisory services.

Dresdner proposes to engage in these activities throughout the world.

Dresdner - NY, Incorporated, New York, New York (DNY), a subsidiary of DSI that engages in certain securities dealing activities, would continue to operate as a subsidiary of Dresdner, pursuant to section 8(c) of the IBA. Dresdner has stated that DNY and the U.S. operations of Dresdner engaged in pursuant to section 4 of the BHC Act will remain completely separate and will not engage in any business with, or on behalf of, each other in the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks generally have provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 794, 806 (January 5, 1984).

Dresdner maintains that the Board previously has determined by regulation that several of the proposed activities are closely related to banking. See 12 CFR 225.25(b)(4), (b)(5), and (b)(15); and *PNC Financial Corp.*, 75 Fed. Res. Bull. 396 (1989) (PNC). Dresdner has stated that it would engage in these activities in accordance with the limitations and conditions established by the Board, except that Dresdner has proposed that DKB not be subject to one of the disclosure requirements relied on by the Board in PNC in authorizing a section 20 subsidiary to engage in full service brokerage activities. In particular, Dresdner proposes that DKB not be required to disclose at the time any brokerage order is taken whether DKB is acting as agent or principal with respect to the security.

Dresdner also states that the other proposed activities have been approved by Board order. See *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989) (acting as agent in the private placement of securities and purchasing and selling securities on the order of investors as a riskless principal); *Canadian Imperial Bank of Commerce*, 76 Fed. Res. Bull. 158 (1990) (CIBC); *J.P. Morgan & Co. Incorporated, et al.*, 75 Fed. Res. Bull. 192 (1989), aff'd sub nom. *Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990); and *Citicorp, et al.*, 73 Fed. Res. Bull. 473 (1987), aff'd sub nom. *Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir.), cert. denied, 486 U.S. 1059 (1988).

In light of the fact that it has acquired a going concern, Dresdner has requested authority to calculate DKB's compliance with the revenue limitation imposed on section 20 companies on an annualized basis during the first year after consummation of the acquisition and thereafter on a rolling quarterly basis. See *Dauphin Deposit Corporation*, 77 Fed. Res. Bull. 672 (1991). Dresdner has stated that DKB would engage in the proposed activities in accordance with the limitations and prudential guidelines established by the Board in previous orders.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Dresdner ''can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. 1843(c)(8). Dresdner believes that the proposal would produce public benefits that outweigh any potential adverse effects. In particular, Dresdner maintains that the proposal would not materially reduce competition in the relevant markets and would enable Dresdner to offer its customers a broader range of products.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 29, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 28, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29392 Filed 12–1–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of monthly meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, December 14 from 9 a.m. to 4 p.m. in room 7C13 of the General Accounting Office, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss issues arising from the December 5 public hearing on Supplementary Stewardship Reporting exposure draft and also to discuss issues related to the Accounting for Revenue and Other Financing Sources exposure draft.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., NE., Room 1001, Washington, DC 20002, or call (202) 5–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 28, 1995.

Ronald S. Young,

Executive Director.

[FR Doc. 95–29381 Filed 12–1–95; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gail T. Lovelace, Director of Personnel, General Services Administration, 18th & F Streets NW., Washington, DC 20405, (202) 501–0398.

SUPPLEMENTARY INFORMATION: Section 4313(c) (1) through (5) of Title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s). The Board(s) shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the Review Board are:

1. Thurman M. Davis (Chairperson), Deputy Administrator.
2. Karen R. Adler, Regional Administrator, Northeast and Caribbean Region (New York).
3. Marcella F. Banks, Acting Associate Administrator for Management Services and Human Resources.
4. Paul E. Chistolini, Regional Administrator, Mid-Atlantic Region (Philadelphia).
5. Dennis J. Fischer, Chief Financial Officer.
6. Glen W. Overton, Acting Commissioner, Public Buildings Service.
7. Frank P. Pugliese, Commissioner, Federal Supply Service.
8. Barbara O. Silby, Chief of Staff, Office of the Administrator.
9. Joe M. Thompson, Commissioner, Information Technology Service.
10. Robert J. Woods, Commissioner, Federal Telecommunications Service.

Dated: November 22, 1995.

Gail T. Lovelace,

Director of Personnel.

[FR Doc. 95–29373 Filed 12–1–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health Meeting: Date Change

Federal Register Citation of Previous Announcement: 60 FR 55845—dated November 3, 1995.

SUMMARY: Notice is given that the meeting and dates for the Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH), of the Centers for Disease Control and Prevention (CDC) has changed. The meeting times, place, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

Original Dates: November 20–21, 1995.

New Date: December 19, 1995.

Contact Person for More Information: Richard A. Lemen, Ph.D., Executive Secretary, BSC, NIOSH, and Deputy Director, NIOSH, CDC, 1600 Clifton Road, NE, Mailstop D–35, Atlanta, Georgia 30333, telephone 404/639–3773.

Dated: November 28, 1995.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–29442 Filed 12–1–95; 8:45 am]

BILLING CODE 4163–19–M

National Institute for Occupational Safety and Health (NIOSH); Meeting

Name: Setting a National Occupational Research Agenda: Researchers Working Group Meeting.

Time and Date: 10 a.m.–4 p.m., December 12, 1995.

Place: The Latham Hotel, Presidential Ballroom, 3000 M Street, NW, Washington, DC 20007.

Status: Open to the public, limited only by the space available. The room accommodates approximately 80 people. Public comments will be taken at the end of the meeting.

Purpose: NIOSH will sponsor three meetings of groups with different expertise to assist in the development of a national agenda for occupational safety and health research for the next decade. At each meeting, invited participants will discuss and contribute their perspectives in work sessions open to the public. Three work groups comprising researchers, health professionals, and others in the occupational health and safety community, will meet in public sessions to discuss research needs and provide recommendations from individual members of the work groups. A limited amount of time will be reserved to provide members of the public attending these work group meetings the opportunity to comment.

The tentative agenda of the meetings will include: Discussion and enumeration of items for potential inclusion into the national research agenda. Research priorities for consideration include health effects, hazardous exposures, work environments, industries, occupations, and populations associated with significant occupational disease, injury, disability, fatalities, or topics of growing importance in the future.

Matters To Be Discussed

As the lead federal health agency for research into the causes and prevention of work injuries and diseases, NIOSH has a responsibility to continually assess the state of existing knowledge and define future research needs and priorities. The development of a national research agenda will assist NIOSH and the occupational safety and health research community in establishing priorities and targeting some of the scientific needs of the next decade that offer the greatest potential for advancing the safety and health of workers. Establishing these priorities is especially important in light of increasing fiscal constraints on occupational safety and health research in both the public and private sectors. The agenda is intended to serve decision-makers and scientists working throughout the field, employed in government, corporate, labor, university, and private research programs.

NIOSH has developed a discussion list of possible items for the national research agenda. A small group of scientists reviewed a wide array of information ranging from the scope of occupational safety and health problems to future employment projections. Other scientific agenda-setting processes were also considered. In addition, the group agreed on the scope of agenda items it would propose. For example, it decided that a category such as ''occupational lung diseases'' would be too inclusive to serve as a research priority, that items of this breadth would encompass the field rather than provide decision-makers and scientists with focussed direction to meet some of the greatest needs and opportunities for prevention. The group ultimately listed approximately 50 items:

Health response	Exposure
Traumatic Injury:	
—Eye Injury	Chemical Mixtures (Including Hazardous Waste).
—Electrocutions	Pesticides.
—Falls	Solvents.
Neck, Shoulder & Other Upper	Oils and related derivatives.
Extremity Disorders	(e.g., Cutting Fluids, Diesel).
Low Back Disorders	Indoor Environment.
Fertility and Pregnancy Outcomes	Thermal stresses.
Occupational Asthma	Mineral and Synthetic Fibers.
Pneumoconioses	Metals and Related Compounds.
Inhalation Injury	Hormonally Active Substances.
Hypersensitivity Lung Disease	Violence/Assaults.
Occupational Chronic Diseases (Selected):	Motor Vehicles.
—Chronic Obstructive Lung Disease	Heavy Machinery.
—Chronic Renal Disease	Hand Tools.
—Ischemic Heart Disease	Mechanical Stressors
—Neurodegenerative Disease	Noise.
(Cognitive & Movement Disorders)	Electric and Magnetic Fields.
Occupational Infectious Diseases	Behavioral Risk Factors.
Depression and Anxiety	
Immune Dysfunction	
Neuroimmune Function	
Hearing Loss	
Contact Dermatitis	

Sector—work environment—workforce	Research process
Construction	Intervention and Prevention
Agriculture	Effectiveness Research
Small Businesses	Engineering and Technologic Solutions
Work Organization (Changing	Exposure Assessment Methods
Economy and Workforce)	Development
Emerging Technologies	Hazard Surveillance
Vulnerable Populations	Disease Surveillance
Service Workers	Injury Surveillance
	Risk Assessment Methodology
	Identification of Molecular
	Correlates of Cancer and other Chronic Diseases
	Occupational Health Services
	Research (e.g., Manpower Needs; Clinical
	Outcomes Research)

From this list and additional items that are recommended, NIOSH anticipates producing a final agenda of 15–25 of the highest scientific priorities for advancing safety and health. The following criteria were used in developing this initial discussion list and are proposed for the development of the research agenda: (1) The seriousness of the hazard in terms of death, injury, disease, disability, and economic impact; (2) the number of workers exposed or the magnitude of the risk; (3) the potential for risk reduction; (4) the expected trend in the importance of the subject; and, (5) the likelihood that the results of targeted research over the next decade will improve disease and injury prevention to protect worker health.

NIOSH is seeking input over the next five months to assure that the final agenda includes input from the broadest base of occupational safety and health expertise. In addition to the three meetings described in this announcement, the process for public

input includes the following elements: (1) Corporate and worker liaison committees and a broader-based stakeholders outreach committee will assist NIOSH in obtaining involvement and input from employers, employees, health officials, health professionals, scientists, and public health, advocacy, scientific, industry and labor organizations; (2) A public meeting was held on November 30, 1995, to obtain early input on the research priorities, criteria for selection of priorities, and the process for developing the agenda; (3) Regional public meetings will be held in increase the opportunities for input from employers, employees, scientists, and other public stakeholders across the United States; (4) A final public meeting will be held in March 1996 to present a preliminary research agenda and provide the opportunity for public review and comment; and, (5) Public input throughout the process; the public is encouraged to provide oral comments at the public meetings and written comments through March 6, 1996.

The final agenda will be presented at a scientific symposium commemorating the 25th anniversary of the Occupational Safety and Health Act on April 29, 1996.

NIOSH encourages the public to provide recommendations on research priorities, criteria for determining priorities, and the process of developing the research agenda throughout the process. To attend, any or all of these three meetings, or to receive additional information, please contact Mr. Chris Olenec as indicated below. On-site registration will be available; however, to assist in planning for the meeting, advance registration is requested.

ADDRESSES: Written public comments on the National Occupational Research Agenda should be mailed to Ms. Diane Manning, NIOSH, CDC, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mr. Chris Olenec, NIOSH, CDC, 200 Independence Avenue, Room 317B, Washington, DC 20201, telephone 202/205–2640 or by FAX (202) 260–1898.

Dated: November 28, 1995.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–29529 Filed 12–1–95; 8:45 am]

BILLING CODE 4163–19–M

Health Resources and Services Administration

Program Announcement for Grant and Cooperative Agreement Programs Administered by the Division of Disadvantaged Assistance, Bureau of Health Professions for Fiscal Year 1996

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for three grant programs for fiscal year (FY) 1996 under the authority of title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. These programs include:

Grants for Centers of Excellence (COE) in Minority Health Professions Education (section 739, PHS Act)

Grants for Health Careers Opportunity Program (HCOP) (section 740, PHS Act)

Grants for the Minority Faculty Fellowship Program (MFFP) (section 738(b), PHS Act)

This program announcement is subject to reauthorization of the legislative authority and to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. At this time, given a continuing resolution and the absence of FY 1996 appropriations for title VII programs, the amount of available funding for these specific grant programs cannot be estimated.

Funding factors will be applied in determining funding of approved applications for some of these programs. A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications. A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria. It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Definitions

The following definitions were established after public comment at 56 FR 22440, dated May 15, 1991.

''A significant number of minority individuals enrolled in the school'' means that to be eligible to apply for a Hispanic COE, a medical, osteopathic medicine, or dental school must have at least 25 enrolled Hispanic students. Schools of pharmacy must have at least 20 enrolled Hispanic students. To apply as a Native American COE, an eligible medical or dental school must have at least eight enrolled Native American students and a school of pharmacy or osteopathic medicine must have at least five enrolled Native American students. To be eligible to apply for an ''Other'' Minority Health Professions Education COE, an eligible school must have above the national average of underrepresented minorities (medicine 13%, osteopathic medicine 8%, dentistry 15%, pharmacy 11%) enrolled in the school. Applicants must evidence that any particular subgroup of Asian individuals is underrepresented in a specific discipline. These numbers represent the critical mass necessary for a viable program. A viable program is one in which there is a sufficient number of students to warrant a Center of Excellence level educational program. Stated numerical levels are just above the median for schools reporting a critical mass necessary for a viable program. The requirement that schools applying for Other Minority Health Professions Education Centers have an enrollment of underrepresented students that is above the national average for that discipline is statutory.

''Effectiveness in Providing Financial Assistance'' will be evaluated by examining the data on scholarships and other financial aid provided to the targeted group in relation to the scholarships and financial aid provided to the total school population.

''Effectiveness in Recruitment'' will be evaluated by examining the first-year and total enrollments of targeted students in relation to the first-year and total enrollments for the entire school.

''Effectiveness in Retaining Students'' will be determined by retention rates for the targeted group and academic and non-academic support systems operative for the target group of students at the school.

''Minority'' means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, or Hispanic.

''Underrepresented Minority'' means, with respect to a health profession,

racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population involved. This definition encompasses Blacks, Hispanics, Native Americans, and, potentially, various subpopulations of Asian individuals. Applicants must evidence that any particular subgroup of Asian individuals is underrepresented in a specific discipline.

The following definitions were established in OMB Directive No. 15.

''American Indian or Alaskan Native'' means a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition. This definition applies to the Health Careers Opportunity Program.

''Asian or Pacific Islander'' means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

''Black'' means a person having origins in any of the black racial groups of Africa.

''Hispanic'' means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

Following are additional definitions.

As defined in section 799, ''accredited,'' when applied to a school of medicine, optometry, podiatry, pharmacy, public health or chiropractic, or a graduate program in health administration, clinical psychology, clinical social work, or marriage and family therapy, means a school or program that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, except that a new school or program that, by reason of an insufficient period of operation, is not, at the time of application for a grant or contract under this title, eligible for accreditation by such a recognized body or bodies, shall be deemed accredited for purposes of this title, if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school or program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of the first entering class in such school or program.

''Community-based Program'' means a program with organizational headquarters located in and which primarily serves: a Metropolitan Statistical Area, as designated by the Office of Management and Budget; a Bureau of Economic Analysis, U.S. Department of Commerce designated nonmetropolitan economic area or a county; or Indian tribe(s) as defined in 42 CFR 36.102(c), i.e., an Indian tribe, band, nation, rancheria, Pueblo, colony or community, including an Alaska Native Village or regional or village corporation.

As defined in section 799, ''graduate program in health administration'' and ''graduate program in clinical psychology'' mean an accredited graduate program in a public or nonprofit private institution in a State that provides training leading, respectively, to a graduate degree in health administration or an equivalent degree and a doctoral degree in clinical psychology or an equivalent degree.

For the Health Careers Opportunity Program, ''health professions schools'' means schools of allopathic medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, chiropractic, or graduate programs in clinical psychology and health administration, as defined in sections 799 (l)(A) and (l)(B) of the Public Health Service Act and as accredited in section 799(l)(E) of the Act.

For the Centers of Excellence Program, ''health professions schools'' means schools of medicine, osteopathic medicine, dentistry and pharmacy, as defined in section 739(h), which are accredited as defined in section 799(l)(E) of the Act. For purposes of the Historically Black Colleges and Universities (HBCUs), this definition means those schools described in section 799(l)(A) of the Act and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for fiscal year 1987.

As defined in 42 CFR 57.1804(b)(2), an ''individual from a disadvantaged background'' means an individual who: (a) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession or; (b) comes from a family with an annual income below a level based on low-income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs.

The following income figures determine what constitutes a low-income family for purposes of these Health Careers Opportunity Program grants for fiscal year 1996:

Size of parents' family [1]	Income level [2]
1	$10,000
2	12,900
3	15,400
4	19,700
5	23,200
6 or more	26,100

[1] includes only dependents listed on Federal income tax forms.

[2] adjusted gross income for calendar year 1994, rounded to nearest $100.

As defined in section 739, the term ''Native Americans'' means American Indians, Alaskan Native, Aleuts, and Native Hawaiians. This definition applies to the Centers of Excellence Program.

For the Minority Faculty Fellowship Program, ''minority'' means an individual from a racial or ethnic group that is underrepresented in the health professions, as defined in section 738.

''Program of Excellence'' means any programs carried out by a health professions school with funding under section 739 Grants for Centers of Excellence in Minority Health Professions Education.

As defined in section 799, the term ''school of allied health'' means a public or nonprofit private college, junior college, or university or hospital-based educational entity that: a) provides, or can provide, programs of education to enable individuals to become allied health professionals or to provide additional training for allied health professionals; b) provides training for not less than a total of 20 persons in the allied health curricula (except that this subparagraph shall not apply to any hospital-based educational entity); c) includes or is affiliated with a teaching hospital; and d) is accredited by a recognized body or bodies approved for such purposes by the Secretary of Education or which provides to the Secretary satisfactory assurance by such accrediting body or bodies that reasonable progress is being made toward accreditation.

As defined in section 799, ''school of medicine,'' ''school of dentistry,'' ''school of osteopathic medicine,'' ''school of pharmacy,'' ''school of optometry,'' ''school of podiatric medicine,'' ''school of veterinary medicine,'' ''school of public health,'' and ''school of chiropractic'' mean an accredited public or nonprofit private school in a State that provides training

leading, respectively, to a degree of doctor of medicine, a degree of doctor of dentistry or an equivalent degree, a degree of doctor of osteopathy, a degree of bachelor of science in pharmacy or an equivalent degree or a degree of doctor of pharmacy or an equivalent degree, a degree of doctor of optometry or an equivalent degree, a degree of doctor of podiatric medicine or an equivalent degree, a degree of doctor of veterinary medicine or an equivalent degree, a graduate degree in public health or an equivalent degree, and a degree of doctor of chiropractic or an equivalent degree, and including advanced training related to such training provided by any such school.

As defined in section 799, ''State'' includes the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, Virgin Islands, Guam and American Samoa.

Centers of Excellence (COE) in Minority Health Professions Education

Purposes: Grants for eligible Historically Black Colleges and Universities (HBCUs), Hispanic, Native American and Other Centers of Excellence must be used by the schools for the following purposes:

1. To establish, strengthen, or expand programs to enhance the academic performance of minority students attending the school;

2. To establish, strengthen, or expand programs to increase the number and quality of minority applicants to the school;

3. To improve the capacity of such schools to train, recruit, and retain minority faculty;

4. With respect to minority health issues, to carry out activities to improve the information resources and curricula of the school and clinical education at the school; and

5. To facilitate faculty and student research on minority health issues.

Applicants must address all five legislative purposes. In addition, grants for eligible HBCUs as described in section 799(l)(A) and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for FY 1987 may also be used to develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for minority individuals, and to provide improved access to the library and informational resources of the school.

Other Requirements: For Hispanic Centers of Excellence, the health professions schools must agree to give priority to carrying out the duties with respect to Hispanic individuals.

Regarding Native American Centers of Excellence, the health professions school must agree to:

l. Give priority to carrying out the duties with respect to Native Americans;

2. Establish a linkage with one or more public or nonprofit private institutions of higher education whose enrollment of students has traditionally included a significant number of Native Americans for purposes of identifying potential Native American health professions students of the institution who are interested in a health professions career and facilitating their educational preparation for entry into the health professions school; and

3. Make efforts to recruit Native American students, including those who have participated in the undergraduate program of the linkage school, and assist them in completing the educational requirements for a degree from the health professions school.

With respect to meeting these requirements, a grant for a Native American Center of Excellence may be made not only to a school of medicine, osteopathic medicine, dentistry, or pharmacy that individually meets eligibility conditions but also to such school that has formed a *consortium* of schools that collectively meet conditions, without regard to whether the schools of the consortium individually meet the conditions. The consortium would be required to consist of the school seeking the grant and one or more schools of medicine, osteopathic medicine, dentistry, pharmacy, nursing, allied health, or public health. The schools of the consortium must have entered into an agreement for the allocation of the grant among the schools. Each of the schools must have agreed to expend the grant in accordance with requirements of this program. Each of the schools of the consortium must be part of the same parent institution of higher education as the school seeking the grant or be located not more than 50 miles from the school (the applicant).

To qualify as an ''Other'' Minority Health Professions Education Center of Excellence, a health professions school (*i.e.,* a school of medicine, osteopathic medicine, dentistry, or pharmacy) must have an enrollment of underrepresented minorities above the national average for such enrollments of health professions schools. (See definition for ''A significant number of minority individuals enrolled in the school.'')

Eligibility: Section 739 authorizes the Secretary to make grants to schools of medicine, osteopathic medicine, dentistry and pharmacy for the purpose of assisting the schools in supporting programs of excellence in health professions education for Black, Hispanic and Native American individuals, as well as for HBCUs as described in section 799(l)(A) and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for FY 1987.

To qualify as a COE, a school is required to:

1. Have a significant number of minority individuals enrolled in the school, including individuals accepted for enrollment in the school (see definition for ''A significant number of minority individuals enrolled in the school'');

2. Demonstrate that it has been effective in assisting minority students of the school to complete the program of education and receive the degree involved;

3. Show that it has been effective in recruiting minority individuals to attend the school, including providing scholarships and other financial assistance to such individuals, and encouraging minority students of secondary educational institutions to attend the health professions school; and

4. Demonstrate that it has made significant recruitment efforts to increase the number of minority individuals serving in faculty or administrative positions at the school.

These entities must be located in a State.

Payments under grants for Centers of Excellence may not exceed 3 years, subject to annual approval by the Secretary, the availability of appropriations, and acceptable progress toward meeting originally stated objectives.

Review Criteria: The review of applications will take into consideration the following criteria:

1. The degree to which the applicant can arrange to continue the proposed project beyond the Federally-funded project period;

2. The degree to which the proposed project meets the purposes described in the legislation;

3. The relationship of the objectives of the proposed project to the goals of the plan that will be developed;

4. The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

5. The adequacy of the staff and faculty to carry out the program;

6. The soundness of the budget for assuring effective utilization of grant funds, and the proportion of total program funds which come from non-Federal sources and the degree to which they are projected to increase over the grant period;

7. The number of individuals who can be expected to benefit from the project; and

8. The overall impact the project will have on strengthening the school's capacity to train the targeted minority health professionals and increase the supply of minority health professionals available to serve minority populations in underserved areas.

Established Funding Preference: A funding preference will be given to competing continuation (renewal) applications for Centers of Excellence programs whose current project periods end in fiscal year 1996 and which score at or above the 50th percentile of all applications which are recommended for approval. The purpose of this preference is to maximize Federal and non-Federal investments in accomplishing the nature and scope of the legislative purposes of the Centers of Excellence Program. To realize the intended impact of the COE program more than one grant period is required. This funding preference is intended to direct assistance to quality COE programs that have documented sustained or increased accomplishments under this program.

This funding preference was established in FY 1995, following public comment (60 FR 6719, dated February 3, 1995) and is continued in FY 1996 with the addition of the requirement to score at or above the 50th percentile.

Maintenance of Effort: A health professions school receiving a grant will be required to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the school for the fiscal year preceding the fiscal year for which the school receives such a grant. In addition, the school agrees that before expending grant funds, the school will expend amounts obtained from sources other than the grant.

Funding: The statute requires that, of the amount appropriated for any fiscal year, the first $12 million will be allocated to certain Historically Black Colleges and Universities (HBCUs) described in section 799(1)(A) of the Act and which received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for the fiscal year 1987. Of the remaining balance, sixty (60) percent must be allocated to Hispanic and Native American Centers of Excellence, and forty (40) percent must be allocated to the ''Other'' Centers of Excellence. A grant made for a fiscal year may not be made in an amount that is less than $500,000 for each Center.

Health Careers Opportunity Program (HCOP)

Purpose and Eligibility: Section 740 authorizes the Secretary to make grants to and enter into contracts with schools of allopathic medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from such schools. The assistance authorized by this section may be used to: (1) Identify, recruit, and select individuals from disadvantaged backgrounds for education and training in a health profession; (2) provide for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education designed to assist them to complete successfully such regular course of education at such a school or referring such individuals to institutions providing such preliminary education; (3) facilitate the entry and retention of such individuals in health and allied health professions schools; and (4) provide counseling and advice on financial aid to assist such individuals to complete successfully their education at such schools. Applicants must address at least 2 purposes. The period of Federal support will not exceed 3 years.

Project Requirements for Postbaccalaureate Programs: The following project requirements for postbaccalaureate programs were established as a preference after public comment at 55 FR 11264, dated March 27, 1990. Postbaccalaureate programs may also combine the following requirements with other HCOP activities as defined in the statutory purposes described above.

A. A health professions school will meet the requirements for a postbaccalaureate program if:

1. Either the applicant health professions school or an undergraduate school with which it has a formal arrangement:

a. Identifies and selects a cohort of seven or more disadvantaged students that have completed an undergraduate prehealth professions program and applied but were not accepted into a health professions school, or made a late decision to enter a new health professions school for participation in the program; and

b. Provides the selected student cohort with one calendar year (including the initial 6 to 8 week summer program) of rigorous postbaccalaureate (undergraduate and/or professional) level science and other appropriate educational experiences to prepare the students for entry into the applicant health professions school; and

2. The applicant health professions school:

a. Accepts for enrollment in the first year of its health professions school class, upon entry into the post-baccalaureate program, members of the cohort who successfully complete the program; or assures enrollment, at the election of the student at another health professions school; and

b. Provides members of the cohort and other disadvantaged enrollees retention services including a 6 to 8 week prematriculation summer program to ease their transition into the health professions school curriculum.

Stipends would be available through the grant for the targeted students during their summer programs and undergraduate academic year participation.

B. A school of allied health will meet the requirements for a postbaccalaureate program if:

1. Either the applicant allied health school or an undergraduate school offering pre-allied health preparation with which the school has a formal arrangement:

a. Identifies and selects a cohort of five or more disadvantaged students for participation in the program who have completed an undergraduate degree with a significant science focus and made a late decision to enter an allied health professions school and are in pursuit of a baccalaureate level degree in physical therapy, physician assistant, respiratory therapy, medical technology, or occupational therapy; and

b. Provides the selected student cohort with one calendar year (including an initial 6 to 8 week summer program) of rigorous science and other education experiences (e.g., allied health basic science, and quantitative and reading skills), to prepare them for entry at the end of that year into one of the above-named

baccalaureate level training programs of the applicant allied health school; and

2. The applicant allied health school:

a. Accepts for enrollment in the first-year class of one of the specified baccalaureate level training programs of the applicant allied health school under entry into the preprofessional phase, members of the cohort who complete the program, or assures enrollment, at the election of the student at another health professions school; and

b. Provides members of the cohort and other disadvantaged enrollees with retention services including a 6 to 8 week prematriculation summer program to ease the transition into the specified allied health professions school curriculum.

Review Criteria: The review of applications will take into consideration the following:

(a) The degree to which the proposed project adequately provides for the requirements in the program regulations;

(b) The number and types of individuals who can be expected to benefit from the project;

(c) The administrative and management ability of the applicant to carry out the proposed project in a cost effective manner;

(d) The adequacy of the staff and faculty;

(e) The soundness of the budget;

(f) The potential of the project to continue without further support under this program.

Statutory Funding Priority: Public Law 102–408 requires the Secretary to give priority in funding to the following schools:

1. A school which previously received an HCOP grant and increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 (for which the applicant must supply data) by the end of 3 years from the date of the award of the HCOP grant; and

2. A school which had not previously received an HCOP grant that increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 (for which the applicant must supply data) over any period of time (3 consecutive years).

Established Funding Priority: The following funding priority was established in fiscal year 1990 after public comment at 55 FR 11264, dated March 27, 1990, and is being continued in FY 1996, with the exception that wording related to alternative means of documenting enrollment in terms of increases and retention rates for disadvantaged students has been deleted. Progress in these areas is considered as a part of the merit review process for this program and applicants will be informed of relevant benchmarks in application materials.

A funding priority will be given to HCOP applications from health professions schools that have a disadvantaged student enrollment of 35 percent or more. Traditionally, disadvantaged students have been disproportionally underrepresented in the health profession schools and the health professions. A funding priority will also be given to schools of allied health offering baccalaureate or higher level programs in physical therapy, physician assistant, respiratory therapy, medical technology or occupational therapy that have a disadvantaged student enrollment of 35 percent or more among those programs.

Funding Preference: The following preference was established following public comment at 57 FR 61914, dated December 29, 1992 and will be applied in FY 1996. Preference be given to competing continuation applications (renewals) for postbaccalaureate programs funded under the fiscal year 1990 HCOP Funding Preference (as defined in the Federal Register notice of March 27, 1990, 55 FR 11264) which score at or above the 50th percentile of all applications which are recommended for approval, and which can evidence the following: (1) disadvantaged students were recruited into the postbaccalaureate program at a level at least equal to the number of students originally projected in FY 1990, and (2) the cohort of first year disadvantaged students entering the health or allied health professions school in September 1996 exceeds the number of disadvantaged students enrolled in the first year class in September 1995 by a number equal to 50 percent of the postbaccalaureate participants projected for enrollment in 1996.

In addition, consideration will be given to an equitable geographic distribution of projects, and the assurance that a combination of all funded projects represents a reasonable proportion of the health professions specified in the legislation.

Funding: The statute requires that, of the amount appropriated for any fiscal year, 20 percent must be obligated for stipends to disadvantaged individuals of exceptional financial need who are students at schools of allopathic medicine, osteopathic medicine, or dentistry.

Grants for the Minority Faculty Fellowship Program (MFFP)

Purpose: The purpose of the MFFP is to increase the number of underrepresented minority faculty members in health professions schools, i.e., schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical psychology, and other public or private nonprofit health or educational entities.

Specifically, these grant awards are intended to allow institutions an opportunity to provide a fellowship to individuals who have the potential for teaching, administering programs, or conducting research as faculty members. Institutions must demonstrate a commitment and ability to identify, recruit, and select underrepresented minorities in health professions. The institutions' training programs provide the fellows with the techniques and skills needed to secure an academic career including competence in: pedagogical skills, research methodology, development of research grant proposals, writing and publication skills, and the ability to work with minority populations and provide health services to medically underserved communities. In addition, the fellows must work under the direct supervision of a senior level faculty member engaged in the disciplines mentioned above, and upon successful completion of the program would be assured a teaching position at the institution.

Section 738(b) authorizes the Secretary to provide a one-year fellowship award to an eligible health professions school which includes a stipend in an amount not exceeding 50 percent of the regular salary of a similar faculty member, or $30,000, whichever is less. Grant funds are available to support fellow costs *only* and are limited to stipend, tuition and fees, and travel. Stipends must be paid by the grantee institution in accordance with its usual institutional payment policy, schedule and procedures. Stipend funds may be supplemented through other resources. Direct financial assistance to fellows may not be received concurrently with any other Federal education award (fellowship, traineeship, etc.), except for educational assistance under the Veterans Readjustment Benefits Act (''GI Bill''). Loans from Federal funds are not considered Federal awards. Any fellow who continues to receive full institutional salary is not eligible for stipend support from these grant funds.

Period of Support: The period of Federal support will not exceed one year for each fellowship award to an applicant institution. However, a fellowship award to an individual recipient must be for a minimum of two years. The program *does not* contribute to the support of the fellow in the second year. The applicant institution (school) will be required to support the fellow for the second year at a level not less than the total of Federal and institutional funds awarded for the first year.

Eligibility Requirements for the Applicant Institution: Eligible applicants for this program are schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical psychology, and other public or private nonprofit health or educational entities.

In addition, to receive a fellowship award, an applicant institution must demonstrate to the Secretary that it has the commitment and ability to:

- Identify, recruit and select individuals from underrepresented minorities in health professions who have the potential for teaching, administering programs, or conducting research at a health professions institution;
- Provide such individuals with the skills necessary to enable them to secure an academic career. Training may include: pedagogical skills, program administration, the design and conduct of research, grant writing, and the preparation of articles suitable for publication in peer reviewed journals;
- Provide services designed to assist such individuals in their preparation for an academic career, including the provision of mentors; and
- Provide health services to rural or medically underserved populations.

In Addition, the Applicant Institution Shall Agree to the Following Assurances:

- Provide an assurance that the applicant institution will make available (directly through cash donations) $1 for every $1 of Federal funds received under the fellowship (each fellowship must include a stipend in an amount not exceeding 50 percent of the regular salary of a similar faculty member, or $30,000, whichever is less);
- Provide an assurance that institutional support will be provided for the individual for a second year at a level not less than the total amount of Federal and institutional funds provided in the year in which the grant was awarded;
- Provide an assurance that the fellowship recipient is from a minority group underrepresented in the health professions; has at a minimum, appropriate advanced preparation (such as a master's or doctoral degree in a health profession) and special skills necessary to enable that individual to teach and practice;
- Provide an assurance that the recipient of the fellowship will be a member of the faculty of the applicant institution; and
- Provide an assurance that the recipient of the fellowship has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the individual submits a request for the fellowship.

Eligibility Requirements for the Fellows: Fellowship awards must be for two years, and are provided for an individual who meets the following criteria:

- Individual must be from a minority group underrepresented in the health professions;
- Individual must have appropriate advanced preparation (such as a master's or doctoral degree in a health profession) and special skills necessary to enable that individual to teach and practice;
- Individual must not have been a member of the faculty of any school at any time during the 18-month period preceding the date on which the individual submits a request for the fellowship;
- Individual must have completely satisfied any other obligation for health professional service which is owed under an agreement with the Federal Government, State Government, or other entity prior to beginning the period of service under this program;
- Individual must be a U.S. citizen, noncitizen national, or foreign national who possesses a visa permitting permanent residence in the United States.

Breach of Fellowship Funds: The school will be required to return fellowship funds received if it fails to honor the terms of the fellowship award. Such sums must be paid within 1 year from the day the Secretary determines that the breach occurred. If payment is not received by the payment date, additional interest, penalties, and administrative charges will be assessed in accordance with Federal Law (45 CFR 30.13).

Review Criteria: The review of applications will take into consideration the following review criteria:

1. The extent to which the institution demonstrates that it has the commitment and ability to identify, recruit, and select underrepresented minority faculty, and its ability to provide health services to rural or medically underserved populations;
2. The extent to which the institution's training program will provide the fellow with the preparation, training, and skills needed to secure an academic career. Training may include: pedagogical skills, program administration, grant writing and publication skills, research methodology and development of research grant proposals, and community service abilities;
3. The degree to which the institution's senior faculty are involved in the training and preparation of fellows pursuing an academic career, and the potential of the institution to continue the program without Federal support beyond the approved project period; and
4. The extent to which the institution meets the eligibility requirements set forth in section 738(b) of the Public Health Service Act.

In determining awards, the Secretary will also take into consideration equitable distribution among health disciplines and geographic areas.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthen linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, heath care, and early childhood development services are provided to children.

Application Availability

Application materials are available on the World Wide Web at address: http://www.os.dhhs.gov/hrsa/. Click on the file name you want to download to your computer. It will be saved as a self-extracting WordPerfect 5.1 file. Once the file is downloaded to the applicant's PC, it will still be in a compressed state. To decompress the file, go to the directory where the file has been downloaded and type in the file name followed by a <return>. The file will expand into a WordPerfect 5.1 file. Applicants are strongly encouraged to obtain application materials from the World Wide Web via the Internet.

Questions regarding grants policy and business management issues should be directed to Ms. Wilma Johnson, Acting Chief, Centers and Formula Grants Section (wjohnson@hrsa.ssw.dhhs.gov), Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–17, 5600 Fishers Lane, Rockville, Maryland 20857. The table below provides specific names, phone numbers and deadline dates for each program. If you are unable to obtain the application materials electronically, you may obtain application materials in the mail by sending a written request to the Division of Disadvantaged Assistance at the address above. Written requests may also be sent via FAX (301) 443–5242 or via the Internet (e-mail address: bbrooks@hrsa.ssw.dhhs.gov).

TABLE 1

PHS section No., title, CFDA No., regulation	Grants management contact e-mail: wjohnson @hrsa.ssw.dhhs.gov FAX: (301) 443–6343	Programmatic contact e-mail: bbrooks @hrsa.ssw.dhhs.gov FAX: (301) 443–5242	Deadline date
739, Centers of Excellence, 93.157, 42 CFR part 57 subpart V.	Wilma Johnson, (301) 443–6880.	A. Roland Garcia, Ph.D. (301) 443–4493	2/9/96
740, Health Careers Opportunity Program, 93.822, 42 CFR part 57 subpart S.	Wilma Johnson (301) 443–6880.	Mario A. Manecci, MPH (301) 443–4493	2/9/96
738(b), Minority Faculty Fellowship Program	Wilma Johnson (301) 443–6880.	Lafayette Gilchrist (301) 443–3680	2/9/96

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline dates for receipt of applications for each of these programs are shown in Table 1. Applications will be considered to be ''on time'' if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, applications which exceed the page limitation and/or do not follow format instructions will not be accepted for processing and will be returned to the applicant.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). These programs are also not subject to the Public Health System Reporting Requirements.

Dated: November 28, 1995.

John D. Mahoney,

Acting Administrator.

[FR Doc. 95–29421 Filed 12–1–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and other Communication Disorders Special Emphasis Panel.

Date: December 12, 1995.

Time: 9 am to 12 noon.

Place: 6120 Executive Boulevard, Room 400C, Rockville, MD 20852.

Contact Person: Mary Nekola, Ph.D., Scientific Review Administrator, NIH, NIDCD, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683.

Purpose/Agenda: To review and evaluate Training Grant applications (T32).

The meeting, which will be conducted as a telephone conference call, will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: November 28, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–29463 Filed 12–01–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories that Have Withdrawn from the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

CompuChem Laboratories, Inc., Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263 (formerly: Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, CompuChem Laboratories, Inc.— Special Division)

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING Clinical Laboratories, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath)

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING MetPath Clinical Laboratories, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc.)

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–836–3093

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407–726–9920

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100 (formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000 (formerly: Regional Toxicology Services)

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286 (formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–931–7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon)
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–244–8800
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–989–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206–623–8100
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory is withdrawing from the Program on November 30, 1995:

Laboratory Corporation of America, d.b.a. LabCorp Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522 (formerly: National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division)

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–29379 Filed 12–1–95; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Advisory Committee Establishment

AGENCY: Office of the Secretary, Interior.

ACTION: Notice, establishment of Advisory Committee.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1988) and 41 CFR part 101–6, section 101–6, 1015(a). Following consultation with the General Services Administration and the Office of Management and Budget, notice is hereby given that the Secretary of the Interior is administratively establishing an advisory committee known as the Alaska Land Managers Forum. The purpose of the committee is to advise the Secretary of the Interior, the Governor of Alaska, and others on Alaska land and resources issues.

EFFECTIVE DATE: This decision is effective December 4, 1995.

FOR FURTHER INFORMATION CONTACT: Deborah Williams, Special Assistant to the Secretary of the Interior for Alaska, Office of the Secretary, Department of the Interior, 1689 C Street, Suite 100, Anchorage, Alaska 99501–5151, (907) 271–5485.

SUPPLEMENTARY INFORMATION: In the 36 years since Statehood, land ownership and management in Alaska has undergone a massive change. In 1959, nearly all of Alaska (99.8 percent) was owned by the Federal Government, and most of this land (332 million acres) was public domain under the jurisdiction of the Bureau of Land Management. Today, the State has received title to 85 million acres of a 104 million acre entitlement. Alaskan Natives, through village and regional corporations established under the Alaska Native Claims Settlement Act of 1971, have become major land holders (35 million acres interim conveyed or patented) with the eventual ownership of 45.5 million acres. Finally, over 150 million acres in Federal ownership are in national forests, parks, and wildlife refuges. These changes in land status have, in turn, generated changes in the roles and relationships of the State and Federal agencies in Alaska. Also, Native corporations, as owners of 12 percent of the State's land area, have become major participants in the complexities of land and resource management.

Since Statehood there have been several different types of cooperative planning entities charged with making an overview of Alaska issues and developing comprehensive recommendations to the State and Federal Governments. None of these planning entities exist today. The Secretary of the Interior is establishing the Alaska Land Managers Forum advisory committee, with concurrence of the Governor of Alaska, in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. app.), for the purpose of advising him and others on land and resource issues in Alaska.

Membership on the Forum will consist of individuals appointed by the Secretary of the Interior. To be appointed as cochairs will be the Special Assistant to the Secretary of the Interior for Alaska as the Federal

Cochair and the Lt. Governor of the State of Alaska as the State Cochair. In addition, the charter provides for appointing the commissioners or directors of specified State agencies, the State directors of specified Federal land management agencies, and the heads of two Alaska Native organizations.

Administrative establishment of the Alaska Land Managers Forum is necessary and in the public interest.

Dated: November 28, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–29380 Filed 12–1–95; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[NM–932–4120–06; OKNM 96155]

Notice of 5-year Extension of Current Qualification of the Designated Nine (9) County ''Area'' of Oklahoma Federal Coal for ''Category 5'' Royalty Rate Reductions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notices.

SUMMARY: This announcement gives notice that since the lands within the nine (9) Oklahoma Counties of Atoka, Coal, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Pittsburg, and Sequoyah were designated in 1990 by the New Mexico State Office of the Bureau of Land Management as a Federal Coal ''Area'', and that said Area was determined to be ''Qualified'' as eligible for ''Category 5'' royalty rate reductions in order to establish fair and competitive royalties, and since no basic changes in the Area coal market have occurred, the State Director of the New Mexico State Office of the Bureau of Land Management has extended the Qualification of the Designated Area for ''Category 5'' Royalty Rate Reductions from December 17, 1995 to, and inclusive of, December 17, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Darwyn F. Pogue, Geologist/ Minerals Review Appraiser, Minerals Support Team, Division of Planning, Use and Protection, New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Mail Stop 93000, Santa Fe, New Mexico 87502–0115, Phone (505) 438–7466.

SUPPLEMENTARY INFORMATION: According to data contained in the latest available Annual Report to the Governor of Oklahoma by the Oklahoma Mining Commission, Department of Mines, the nine (9) Oklahoma Counties of Atoka, Coal, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Pittsburg, and Sequoyah contain approximately 80% of the known coal resources of Oklahoma, as determined by the latest studies of the Oklahoma Geological Survey. These same nine (9) counties also contain 100% of the known Federally owned and economically recoverable coal resources in Oklahoma. The Federally owned coal resources are ''acquired minerals'' contained within coal deposits that were purchased from the Choctaw and Chickasaw Native American Tribes in the late 1940's. Therefore, the New Mexico Bureau of Land Management State Director in 1990 designated the aforementioned nine (9) counties as a Federal Coal area, hereinafter referred to as the ''Area'', for the purposes of Federal coal management under the guidelines set forth in Bureau of Land Management (BLM) Manual 3485—Reports, Royalties, and Records; in 43 CFR Part 3400—Coal Management: General; and in Subpart 3485—Reports, Royalties, and Records. BLM Manual 3485 sets forth five (5) Categories by which the holder and/or operator of a Federal Coal Lease may apply for a royalty that is less than the base royalty stated in the lease. Categories 1 through 4 refer to royalty reductions based mainly upon mining and financial criteria, or combinations thereof, that are specific to the mining operation requesting relief. Category 5, however, refers to royalty reductions granted within a designated State or Area that the BLM has concluded to have met all of the following criteria:

1. The Federal Government is not market dominant.

2. Federal royalty rates are above the current market royalty rates for non-Federal coal in the Area.

3. Federal coal would be bypassed or remain undeveloped due to royalty rate differentials.

4. The above conditions exist throughout the Area.

5. A royalty rate reduction under this Category is not likely to result in undue competitive advantages over neighboring areas.

Studies supplementary to those completed in 1990 that resulted in the present Area and subsequent ''Category 5'' reduced royalties, and continuous Area coal economic studies since 1990, have shown, and continue to show, that there have not been any basic changes in the Area coal markets that would substantiate the discontinuation of the present policy. As a result, the State Director has determined that the Qualification of the nine (9) county Area should be extended for another five (5) years, as provided by the Guidelines in BLM Manual 3485—Reports, Royalties, and Records. This will allow operators and/or holders of Federal Coal leases within the Area the continued opportunity to obtain fair and competitive Federal royalty rates; i.e., 2% for Federal coal mined by accepted underground methods, and 4% for Federal coal mined by accepted surface methods. It will further allow for the continued economic viability of the Area.

All Oklahoma coal operators that currently hold Federal coal leases within the Area have been mailed a copy of the above notice.

Dated: November 22, 1995.

Rich Whitley,

Deputy State Director, Division of Planning, Use and Protection, Bureau of Land Management, New Mexico State Office.

[FR Doc. 95–29237 Filed 12–1–95; 8:45 am]

BILLING CODE 4310–84–M

[NM–030–7122–03–8546]

Proposed Expansion of the Continental Mine in Grant County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Rescheduled public scoping meeting and extension of public comment period.

SUMMARY: Due to the Federal Government shutdown, the public scoping meeting scheduled by BLM on Wednesday, November 15, 1995 in Silver City, New Mexico (Federal Register, Vol. 60, No. 205, October 24, 1995, pages 54508–54509) to discuss Cobre Mining Company's proposed Continental Mine Expansion Project was postponed. The meeting is rescheduled at the following time and location:

Time/date	Location
7 p.m., December 19, 1995.	Grant County Courthouse Building, 2nd Floor Courtroom, 201 North Cooper Street, Silver City, New Mexico.

DATES: The public comment period has been extended through January 2, 1996. Written comments should be sent to the address listed below.

ADDRESSES: Comments should be sent to BLM, Las Cruces District, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Chuck O'Donnell, BLM, Las Cruces District Office at (505)525–4373.

Dated: November 29, 1995.
Linda S.C. Rundell,
District Manager.
[FR Doc. 95–29530 Filed 12–1–95; 8:45 am]
BILLING CODE 4310–FB–P

[WY–920–06–1320–00]

Powder River Regional Coal Team Activities: Announcement of Public Meeting

AGENCY: BLM, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) announces that it will hold a public meeting on January 10, 1996 for the following purposes: (1) Review current and past activities in the Powder River Coal Region, (2) review pending coal lease applications (LBA), and (3) make recommendations on pending applications.

DATES: The RCT meeting will begin at 9 a.m. MST on January 10, 1996, at the Hitching Post Inn, in the Cheyenne Club Room, 1700 W. Lincolnway, Cheyenne, Wyoming. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Hitching Post Inn, Cheyenne Club Room, 1700 W. Lincolnway, Cheyenne, WY 82001, telephone (307) 638–3301. Attendees may wish to make their personal room reservations from a block of rooms which has been set aside until December 27, 1995. For room reservations call 1–800–221–0125.

FOR FURTHER INFORMATION CONTACT: Pam Hernandez or Eugene Jonart, Wyoming State Office, Attn. (MLA), P.O. Box 1828, Cheyenne, Wyoming 82003: telephone (307) 775–6270 or 775–6257.

SUPPLEMENTARY INFORMATION: Primary purpose of the meeting is to discuss the following new coal lease applications (LBA): Spring Creek Coal Comp., Kennecott, (MTM83859), filed March 22, 1995; Powder River Coal Company (PRCC), Peabody, (WYW136142), filed March 23, 1995; and Jacob's Ranch, Kerr-McGee, (WYW136458), filed April 14, 1995. This is the initial public notification of the pending applications listed above, in accordance with the Powder River Operational Guidelines. The pending applications are to sustain existing coal mining operations. Generally, a coal lease application filed under the LBA portion of the regulations (43 CFR 3425) takes two to four years to be processed to the competitive lease sale stage, depending on informational and environmental study requirements. The RCT may generate recommendation(s) for any or all of the pending LBAs.

The meeting will serve as a forum for public discussion on Federal coal management issues of regional concern. Any party interested in providing comments or data related to the above pending applications may either do so in writing to the State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003 no later than January 3, 1996, or by addressing the RCT with his/her concern at the meeting on January 10, 1996.

A copy of the new RCT Charter can be obtained from either of the following offices: Wyoming State Office; ATTN: Eugene Jonart 925; P.O. Box 1828; Cheyenne, WY 82003; Montana State Office; ATTN: Ed Hughes (921); P.O. Box 36800; Billings, MT 59107.

The proposed agenda for the meeting follows:

1. Introduction of RCT Members and guests.
2. Approval of the Minutes of the June 16, 1993 Regional Coal Team Meeting held in Billings, Montana.
3. Organizational Changes within BLM.
4. New Powder River RCT Charter.
5. Regional Coal Activity Status:
a. Current Production and trends
b. Activity Since Last RCT Meeting:
Competitive Sales: Wyoming—Eagle Butte LBA, April 5, 1995; Montana—Spring Creek LBA, August 9, 1995.
c. Pending LBAs previously reviewed by RCT:

—Antelope LBA; (Antelope Coal Comp.) filed 12/29/92; 60 million tons; est. sale date is June 1996. EA review to be completed December 1995.
—North Roundup LBA; (Zeigler), filed 7/22/92; 140 million tons; est. sale date is December 1996. EIS will be started December 1995.

d. Status of Coal Exchanges—Texaco/Lake DeSmet; Belco/Hay Creek
e. Coal Lease Modifications Pending (if any): Montana/Wyoming
f. Pending coal lease applications (LBAs):

—Spring Creek Coal Comp.—MTM83859; (Montana); Kennecott Energy; est. 37.8 million tons, 285 acres; no schedule yet.
—PRCC—WYW136142; (Wyoming), Peabody, est. 550 million tons, 4,020 acres, no schedule yet.
—Jacob's Ranch—WYW136458; (Wyoming), Kerr-McGee; est 432 million tons, 4,000 acres, no schedule yet.

6. Executive Summary/Comparison of Previous Leasing Activities.
7. Review of Regional Market Conditions—Demand.
8. Industry Presentations:

—Kennecott Energy.
—PRCC.
—Kerr-McGee.

9. Other Regional Issues:

—Status of Buffalo Resource Area's Management Plan, (Wyoming).

10. RCT Activity Planning Recommendations:

—Review and recommendation(s) on pending lease Application(s).

11. Discussion of next meeting date and location.
12. Adjourn.

Public discussion opportunities will be provided on all agenda items.

Alan R. Pierson,
State Director, Wyoming.
[FR Doc. 95–29454 Filed 12–1–95; 8:45 am]
BILLING CODE 4310–22–M

Sport Fishing and Boating Partnership Council Workshop; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As provided in Section 10(a)(2) of the Federal Advisory Committee Act, the Service announces a meeting designed to foster partnerships to enhance recreational fishing and boating in the United States. This meeting sponsored by the Sport Fishing and Boating Partnership Council, is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration. Summary minutes of the conference will be maintained by the Coordinator for the Sport Fishing and Boating Partnership Council at 4040 North Fairfax Drive, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

DATES: December 20, 1995, beginning at 2 p.m.

ADDRESSES: The meeting will be held at the Stouffer Renaissance Crystal City Hotel located at 2399 Jefferson Davis Highway, Arlington, Virginia, telephone (703) 418–6800.

Agenda

The Council will hear reports from its Initiatives Committee on the draft strategic plan for the U.S. Fish and Wildlife Service's Recreational Fisheries Program. The Council will also consider recommendations from the Initiatives Committee on cost savings measures to reduce the Service's Fisheries Program

expenditures in Fiscal Year 1996 by approximately $2.1 million. The Council will hear a report from its Boating Committee and a status report on Executive Order 12963 for Recreational Fisheries. Public input will be received at approximately 4:40 p.m.

FOR FURTHER INFORMATION CONTACT: Doug Alcorn, Council Coordinator, at 703/358–1777.

Dated: November 24, 1995.

Bruce Blanchard,

Acting Director.

[FR Doc. 95–29372 Filed 12–1–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7 and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Brandywine Chemical Company*, Civil Action No. 95–699, was lodged on November 9, 1995, with the United States District Court for the District of Delaware. A complaint was filed simultaneously with the lodging of the consent decree.

The consent decree pertains to the Halby Chemical Site (''Site''), located in New Castle County, Delaware. Based on EPA's assessment of the present inability of Brandywine Chemical Company (''BCC''), the current Site owner/operator, to pay a substantial portion of response costs, the proposed consent decree requires BCC to: (1) Make a $10,000 payment to the United States within 120 days after entry of the consent decree; (2) pay 75% of the Fair Market Value (''FMV'') of the BCC property to the United States between 5 and 10 years from the date EPA certifies that the response actions are complete; (3) pay to the United States 50% of its cash as reported in its Federal Income Tax Return for the year its property is sold or a FMV payment is made; (4) pay the expenses necessary to retain title to the BCC property until the obligations of the consent decree are satisfied; (5) remove and dispose of all bulk chemicals stored in tanks at the Site within 90 days of the signing of the consent decree; and (6) cease its operations at the Site.

The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (''CERCLA), and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Brandywine Chemical Company*, DOJ Ref. #90–11–2–719A. Commentors may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Delaware, Chemical Bank Building, Suite 1100, 1201 Market Street, Wilmington, Delaware, 198909–2046; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the body of the proposed decree, please refer to the referenced case and enclose a check in the amount of $8.75 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–29435 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed consent decree in *United States* v. *Dec-Tam Corporation*, Civil Action No. 93–10438–RCL, was lodged on November 13, 1995 with the United States District Court for the District of Massachusetts.

The complaint in this action was filed in March 1993 against Dec-Tam Corporation, pursuant to section 113(b) of the Clean Air Act (''Act''), 42 U.S.C. 7413(b). The complaint sought penalties and injunctive relief for violations of Section 112 of the Act, 42 U.S.C. 7412, and of the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. part 61, Subpart M (''Asbestos NESHAP''). The action is based on violations of the Asbestos NESHAP associated with renovation operations at the following locations: Stowe Village Housing Project, Hartford, Connecticut; St. Mark's School, Southborough, Massachusetts; New England Baptist Hospital, Boston, Massachusetts; Remsen Building, Hanover, New Hampshire; Greenwich Hospital, Greenwich, Connecticut; Boiler Plant at Dartmouth College, Hanover, New Hampshire; Southbury Training School, Southbury Connecticut; Norwalk Harbor Facilities, Norwalk, Connecticut; and Cabot Paint & Stains Co., Chelsea, Massachusetts.

The proposed consent decree embodies an agreement by Dec-Tam to pay a civil penalty in the amount of $19,450. In addition, Dec-Tam has agreed to implement certain measures to reduce the likelihood of future violations of the Asbestos NESHAP.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Dec-Tam Corporation*, DOJ Ref. # 90–5–2–1–1674.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts at the United States Attorney's Office located at 1107 J.W. McCormack POCH, Boston, Massachusetts, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section.

[FR Doc. 95–29436 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Research and Development Venture Agreement for Developing Plasma Source Ion Implantation

Notice is given that, on September 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Robert L. Henry, Jr., Corporate Counsel for Environmental Research Institute of Michigan, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture agreement. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are ABB High Power Semiconductors, Pittsburgh, PA, AO Smith Corp., Milwaukee, WI, Diversified Technologies Inc., Bedford, MA, Empire Hard Chrome, Inc., Chicago, IL, Environmental Research Institute of Michigan, Ann Arbor, MI, General Motors, Warren, MI, Harley-Davidson, Inc., Milwaukee, WI, IONEX, Bellaire, MI, Kwikset Corp., Anaheim, CA, Litton Electron Devices, San Carlos, CA, Los Alamos National Laboratory, Los Alamos, NM, NANO Instruments Inc., Oak Ridge, TN, PVI, Oxnard, CA, and the University of Wisconsin-Madison, Madison, WI, and the general areas of their planned activity are to develop plasma-source ion implantation for the processing of lightweight materials to provide enhanced performance of tooling, dies and manufactures parts for motor vehicle components and for other manufacturing applications; an award by the National Institute of Standards and Technology, U.S. Department of Commerce will partially fund this joint venture.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29470 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Casting Aluminum Components Consortium

Notice is hereby given that, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Casting Aluminum Components Consortium (''the Consortium''), has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Consortium and (2) the nature and objectives of the Consortium. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the Consortium and its general areas of planned activity are given below.

The parties to the Consortium are: AlliedSignal Inc., 101 Columbia Road, Morristown, NJ 07962; Stahl Specialty Company, 111 E. Pacific Street, Kingsville, MO 64061; and The Top Die Casting Company, Inc., 13910 Dearborn Ave., South Beloit, IL 61080.

The purpose of the Consortium is cooperative research and production to develop and demonstrate the technology for casting aluminum components with low porosity.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29469 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Perceptual-Based Video Encoding and Quality Measurement

Notice is hereby given that, on September 1, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), David Sarnoff Research Center has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: LSI Logic Corporation, Milpitas, CA; Sun Microsystems Computer Corp., Menlo Park, CA; Bell Atlantic Network Services, Arlington, VA; and David Sarnoff Research Center, Princeton, NJ. The nature and objectives of the research program is to develop and demonstrate ''Perceptual-Based Video Encoding and Quality Measurement''. The activities of the joint venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Membership in the project remains open, and the parties intend to file additional written notifications disclosing all changes in the membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29438 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Research and Development Venture Agreement for Developing Cubic Boron Nitride Coatings for Cutting and Specialty Tools

Notice is given that, on September 7, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), John J. Prizzi, Chief Counsel for Intellectual Property, Kennametal Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture agreement. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Kennametal Inc., Latrobe, Pennsylvania, and Extrude Hone Corporation, Irwin, Pennsylvania, and the general areas of their planned activity are to develop and demonstrate techniques for depositing superhard coatings of cubic boron nitride onto carbide tool blanks to provide a new class of more capable cutting tools suitable for machining harder and more wear resistant materials and in specialty tool dies to improve life and tool performance; an award by the National Institute of Standards and Technology, U.S. Department of Commerce will partially fund this joint venture.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29471 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Plastic Packaging Consortium

Notice is hereby given that, on August 30, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Plastic Packaging Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Consortium. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: National Semiconductor Corporation, Santa Clara, CA; Amoco Chemical Company, Naperville, IL; Leading Technologies, Incorporated, Apollo, PA; Delco Electronics Corporation, Kokomo, IN; Dexter Electronic Materials, Olean, NY; IPAC, San Jose, CA; Olin Corporation Metals Research Laboratory, New Haven, CT; Plaskon Electronic Materials, Inc., Rohm and Haas Company, Spring House, PA; Sheldahl, Incorporated, Northfield, MN; and Sandia National Laboratories, Albuquerque, NM.

The purpose of the Plastic Packaging Consortium is to advance the technology and enhance the United States production capabilities of plastic packaging for integrated microcircuits with the goal of promoting both military and commercial customers to employ plastic encapsulated integrated circuits in a wide variety of applications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29439 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on September 20, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ABB Raymond (headquartered in Lisle, IL) has resigned as an associate member of PCA, and Allis Mineral Systems has changed its name to Svedala Industries, Inc. (headquarters in York, PA).

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 5, 1985, 50 FR 5015. The last notification was filed with the Department on July 18, 1995. A notice has not yet been published in the Federal Register.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29440 Filed 12–1–95; 8:45 am]

BILLING CODE 4140–01–M

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Cost Effective Processes for Manufacturing Advanced Combustion Turbine Blades

Notice is hereby given that, on September 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Technology Program Project No. 95–07–0017, ''Cost Effective Processes for Manufacturing Advanced Combustion Turbine Blades'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the Identities of the parties and (2) the nature and objectives of the venture. The notifications were filed as required by the Act. Pursuant to Section 6(b) of the Act, the identities of the parties are Westinghouse Electric Corporation, Orlando, FL; and PCC Airfoils, Inc., Beachwood, OH. The general area of planned activity is to develop processes for manufacturing advanced combustion turbine blades for the power generation industry under the subject Advanced Technology Program of NIST.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29437 Filed 12–1–95; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to The Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: U.S. Nuclear Regulatory Commission Acquisition Regulation (NRCAR).

2. Current OMB approval number: 3150–0169.

3. How often the collection is required: On occasion; one time.

4. Who is required to asked to report: Offerors responding to NRC solicitations and contractors receiving contract awards from NRC.

5. The number of annual respondents: 750.

6. The number of hours needed annually to complete the requirement or request: 11,372 (10.7 hours per response).

7. Abstract: The mandatory requirements of the NRCAR implement and supplement the government-wide Federal Acquisition Regulation, and ensure that the regulations governing the procurement of goods and services within the NRC satisfy the needs of the agency.

Submit by February 2, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room,

2120 L Street, NW, (lower level), Washington DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld at 703–321–3339. Members of the public who are located outside the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions should be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, D.C., 20555–0001, (301) 415–7233, or by Internet electronic mail at BJS@NRC.GOV.

Dated at Rockville, Maryland, this 28th day of November, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–29424 Filed 12–1–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–344 and 50–412]

Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Beaver Valley Power Station, Units 1 and 2; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request by Duquesne Light Company (the licensee) to withdraw a portion of its September 13, 1995, application for a proposed amendment to Facility Operating License Nos. DPR–66 and NPF–73 for Beaver Valley Power Station, Units 1 and 2 (BVPS–1 and BVPS–2), located in Beaver County, Pennsylvania.

The proposed amendment involved revision of the Administrative Controls section (Technical Specifications (TS) 6.8.6.a.2), 6.8.6.a.7), and 6.14.a.2)) and the Bases section for TS 3/4.11.1.4 of the BVPS–1 and BVPS–2 TSs to be consistent with the requirements of the Offsite Dose Calculation Manual (ODCM). The ODCM was recently updated to reflect the radioactive liquid and gaseous effluent release limits and the liquid holdup tank activity limit of BVPS–1 License Amendment No. 188 and BVPS–2 License Amendment No. 70 which were issued June 12, 1995.

On October 16, 1995, the licensee submitted a letter to the NRC requesting withdrawal of the proposed changes to TS 6.14.a.2) and to the Bases for TS 3/4.11.1.4 because these changes incorrectly referenced superseded sections of 10 CFR Part 20.

The Commission has previously issued a Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing, which was published in the Federal Register on September 22, 1995 (60 FR 49292).

For further details with respect to this action, see the application for amendment dated September 13, 1995, and the licensee's letter of October 16, 1995, which withdrew the portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, 21st day of 1995.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29423 Filed 12–1–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–245]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Northeast Nuclear Energy Company (NNECO) for operation of the Millstone Nuclear Power Station, Unit 1, located in Waterford, Connecticut.

The proposed amendment would remove the Limiting Condition for Operation (LCO) and Surveillance Requirements for the loss-of-normal power (LNP) trip function from Tables 3.2.2 and 4.2.1 and insert new LCO 3.2.F and Surveillance Requirement 4.2.F. In addition, the proposed amendment will add a new table to specify the required LNP instrumentation for each bus, will update the Table of Contents, will make some editorial changes, and will revise the associated Bases section.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change against the criteria set forth in 10 CFR 50.92 and has concluded that the change does not involve a Significant Hazards Consideration (SHC). The bases for this conclusion are that the three criteria of 10 CFR 50.92(c), discussed separately below, are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed:

These changes do not increase the probability of a loss of offsite power event or the occurrence of any accidents which assume loss of offsite power. This is ensured by the LNP instrumentation system design which uses multiple sensing relays and qualified Class 1E components, as well as conservative operability and surveillance requirements.

The LNP instrumentation for a safety division consists of discrete voltage sensing, time delay, initiation, and auxiliary logic relaying. The LNP instrumentation for a safety division is a single trip system (initiation channel) controlled by two instrument channels. Each instrument channel consists of a loss of voltage trip function and a degraded voltage trip function. The two instrument channels each provide a trip signal. The LNP trip signal is comprised of two instrument channels made up of a loss of voltage relay and its timer, and a degraded voltage relay and its timer. The signals from the two instrument channels feed into a delay timer, producing the LNP initiation system for the safety division. The S1 LNP instrumentation is powered from the

S1 125V dc bus, and the S2 LNP instrumentation is powered from the S2 125V dc bus. The loss of voltage, and degraded voltage, sensing relays can be placed in the tripped condition by removing the relay from the case. To minimize the likelihood of an inadvertent safety division initiation, the loss of voltage trip requires 3/3 relays and the degraded voltage trip requires 2/3 relays.

If the LNP instrumentation senses that the preferred offsite power source has been lost for that safety division, the safety related buses for that safety division are disconnected from the offsite source and connected to their emergency power source. If the LNP instrumentation determines that the preferred offsite power source is in a degraded condition for that safety division, and that an ECCS [emergency core cooling system] signal is present, then the safety related buses for that safety division are disconnected from the offsite source and connected to their emergency power source. For a degraded voltage condition on either safety division, without ECCS actuation, the operators are alerted to this condition by an annunciator and will initiate the appropriate corrective actions. This design fulfills the safety functions assumed in the accident analyses relating to loss of normal power/loss of offsite power.

If one instrument channel for a safety division were to fail in the non-conservative state, the safety division's other instrument channel would provide the loss of voltage trip and the degraded voltage trip for that safety division. The ability of the safety division to detect an undervoltage condition and respond is maintained. Each instrument channel has a separate feed, from separate breakers, from the 125 V dc power supply associated with that safety division. The seven day LCO of section 3.2.F.2 is justified based on continued operability of the safety division's redundant trip channel. Seven days allows reasonable time to perform repairs.

The time delays and voltage setpoints specified in Table 3.2.4 ensure that the emergency power source starting and loading times continue to meet the current technical specification requirements. Also, these time delays are long enough to precluded false trips due to voltage transients (e.g., during motor starts). The relay calibration surveillance procedure will establish acceptance criteria for each relay to ensure that the total times specified in Table 3.2.4 are not exceeded. The proposed surveillance testing and calibration frequency of every refueling outage is consistent with the requirements in the current technical specification.

Some of the redundancy in the existing LNP logic will be lost as a result of separating the two divisions of LNP logic, yielding a small increase in the probability of failure of certain portions of LNP logic. However, this impact is not significant, and is outweighed by the beneficial automatic repowering of a deenergized division following an LNP.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously evaluated:

Following the proposed changes, plant response to an LNP on one division would be improved, since a deenergized division would be automatically repowered by its emergency power source while the other division remains aligned to offsite power. There are no malfunctions which would adversely impact both safety divisions while in this alignment.

There are no new failure modes associated with these changes which will prevent the LNP instrumentation from performing its intended safety function. Each individual voltage sensing relay, when removed from its case, provides the tripped contact configuration. The proposed technical specifications would allow relays to be placed in the tripped condition as long as this would not inhibit the LNP function or cause an inadvertent initiation. Additionally, since the design function to ensure that adequate power is available to operate the emergency safeguards equipment has not changed, no new accident or accident of a different kind is created.

The test switches provided for load shed logic testing are similar to the existing test switches on the secondary side of the Potential Transformers. Moreover, they require preplanned removal of a switch box cover, and require the switch to be in its original position before the switch box cover can be replaced. These switches help to avoid operator error in the present practice of sleeving contacts, installing jumpers, and pulling fuses. Administrative controls and personnel training ensure that there are no new failure modes or new or different accident scenarios than those previously evaluated.

A keylock bypass switch when placed in the ''Bypass'' position will block LNP actuation, thus, preventing the starting and loading of the emergency generator for the associated division, if an LNP were to occur. This is not a new failure mode since similar blocking mechanisms currently exist for each of the emergency generators. Currently, the EDG [emergency diesel generator] and GTG [gas turbine generator] can be prevented from starting on an ECCS signal by placement of an existing keylock switch in the ''Off-Normal'' position. To minimize the impact of inadvertent use of the bypass switch, an annunciation is provided. Also, these switches would be strictly administratively controlled to prevent their use during power operation. This restriction on the use of the keylock bypass switches during non-power operation is discussed in the Bases section of these proposed technical specifications. Operation of a keylock switch will result in the emergency power source being declared inoperable per proposed Technical Specification 3.2.F.3. The current logic will not actuate the LNP logic if power is removed from bus 14E or bus 14F individually. These switches will help avoid inadvertent actuation of equipment during surveillance testing by eliminating the need for sleeving of relay contacts, installing jumpers and pulling fuses to perform testing. Administrative controls and personnel training ensure that there are no new failure modes. Careful isolation of a bus for preplanned maintenance is part of the existing maintenance and surveillance activities, and the provision of the keylock switches does not change the infrequent need for these activities. Administrative controls and personnel training ensure that there are no new failure modes or new or different accident scenarios than those previously evaluated.

Although the proposed design does not provide an LNP signal if the 14C/E tie breaker is inadvertently opened, the loss of voltage on bus 14E (which would result from the failure or the inadvertent opening of the tie breaker) is enveloped by the single failure of one safety division. This would be mitigated by the redundant safety division. For a division S1 loss of normal power, plus LOCA [loss of coolant accident], the S2 division is available to power the A and C LPCI [low pressure coolant injection] trains and the A train of core spray. This scenario is no different than the existing design.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

3. Involve a significant reduction in the margin of safety.

The protective boundaries (i.e., fuel cladding, reactor coolant system, containment building) are not affected because the consequences of a design basis accident are not changed. Since the protective boundaries are not affected, any margin of safety is also unaffected. The proposed changes ensure that adequate electrical power is available to operate the emergency safeguards equipment. By maximizing the operability of the LNP Instrumentation without requiring high risk testing, the proposed changes will improve the margin of safety as related to availability of electric power to safety related loads.

Based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed NNECO's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the

30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 03, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 3, 1995,

which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 28th day of November 1995.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29422 Filed 12–1–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Policy Advisory Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the December 8, 1995 meeting of the Industry Policy Advisory Committee will be held from 10 a.m. to 2 p.m. The meeting will be closed to the public from 10 a.m. to 2 p.m.

SUMMARY: The Industry Policy Advisory Committee will hold a meeting on December 8, 1995 from 10 a.m. to 2 p.m. The meeting will be closed to the public. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting is scheduled for December 8, 1995, unless otherwise notified.

ADDRESSES: The meeting will be held at the White House Conference Center, located at 726 Jackson Place, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395–6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–29419 Filed 12–1–95; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36516; File No. SR–CBOE–95–16]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Multi-Market Orders

November 27, 1995.

I. Introduction

On June 1, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to amend CBOE Rule 6.48 to specify certain duties of CBOE members in effecting an options transaction on the CBOE that is part of a stock-option or stock-option combination order. The Exchange filed Amendment No. 1 to the propsoal on June 22, 1995.[3]

Notice of the proposal, as amended, was published for comment and appeared in the Federal Register on August 16, 1995.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

II. Description of the Proposal

The purpose of this proposal is to set forth in existing CBOE Rule 6.48 the duties of CBOE members executing an options order that is a component of a ''package'' stock-option order, as defined by CBOE Rule 1.1(ii)(a) (''stock-option order'') or stock-option combination order, as defined by CBOE Rule 1.1(ii)(b) (''stock-option combination order''),[5] the execution of which involves transactions in CBOE's options market and in another market (a ''multi-market'' order), and to specify the sole basis on which an options trade that is a component of a multi-market order may be cancelled by the members that are parties thereto. The proposed rule change would also make it inconsistent with just and equitable principles of trade, and consequently a violation of Exchange Rule 4.1, for a member to fail to fulfill the new requirements.

CBOE Rule 6.48 currently provides that bids or offers made and accepted in accordance with Exchange rules constitute binding contracts, but that Rule does not address the execution and cancellation of complex multi-market orders. Because such orders have become more prevalent at the CBOE as trading strategies have become more intricate, and because such orders involve concurrent executions at the CBOE and in markets other than the CBOE, the Exchange proposes to adopt new paragraph (b) to Rule 6.48. The Exchange believes that this amendment should establish well-defined conditions and requirements in its Rules that members must observe in executing and cancelling such transactions.

Proposed CBOE Rule 6.48(b) would apply to stock-option and stock-option combination orders, other than orders respecting index options,[6] and would impose two requirements on CBOE members who are parties to such multi-market orders. First, a member

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposes to amend subparagraph (b)(ii) of CBOE Rule 6.48 to clarify that the existence of market conditions that prevent the execution of the non-option leg(s) at the agreed upon price(s) would be the only basis for any one party to a trade representing the options leg of a multi-market order to cancel such trade. *See* Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated June 22, 1995 (''Amendment No. 1'').

The types of ''market conditions'' arising in a no-CBOE market that would be sufficient under proposed Rule 6.48(b)(ii) to justify cancellation of the CBOE leg(s) of a multi-market order, include, but are not limited to, a sudden change in the price of the underlying Securities prior to execution of the stock trade, and a trading halt or systems failure that precludes immediate execution of the stock trade at the agreed upon price. *See* Letter from Dan Schneider, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated June 30, 1995 (''June 30 Letter'').

[4] *See* Securities Exchange Act Release No. 36082 (August 10, 1995), 60 FR 42636.

[5] A stock-option order is an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) of the same series on the opposition side of the market representing the same number of units of the underlying or related security or (b) the purchase and sale of an equal number of put and call option and numbers of units of the underlying or related Securities, on the opposite aside of the market representing in the aggregate twice the number of units of the underlying related security. *See* CBOE Rule 1.1.(ii).

[6] The CBOE believes that paragraph (iii) of proposed Rule 6.48(b) makes it clear that the proposed rule change will not apply to bids or offers included in combination orders that entail the purchase or sale of index options.

announcing such an order to a trading crowd must disclose all legs of the order and must identify the specific markets and prices at which the non-option leg(s) are to be filled. Second, concurrent with the execution of the option leg of any multi-market order, the initiating member and each member that is a counterparty to the trade must take steps immediately to execute the non-option leg(s) in the identified market(s).[7] Because both of these requirements are essential to fair and efficient order execution, proposed new paragraph (c) of Rule 6.48 would provide that any failure to observe either requirement will constitute a violation of CBOE's Rule 4.1, which prohibits conduct inconsistent with just and equitable principles of trade. The Exchange believes that these new provisions will clarify members' expectations about the execution of multi-market orders covered by the proposed rule and will promote prompt execution of each non-option component of such orders.

In addition to establishing requirements incident to execution, the proposed rule change sets forth one exclusive basis on which members may cancel an executed options transaction that is part of a multi-market order. Proposed Rule 6.48(b)(ii) indicates that any member that is a party to an options transaction that is part of a multi-market order may have the options transaction cancelled only in the event that market conditions in any of the identified non-CBOE markets prevent the execution of one or more of the non-option legs of the order. The Exchange believes that cancellation under this exclusive circumstance is fair and appropriate.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[7] The CBOE represents that it expects the order for the non-option leg(s) of the multi-market order will be enacted concurrently with the execution of the option leg of the order. Additionally, the CBOE represents that it will advise members of this expectation in a Regulatory Circular. *See* Letter from Barbara J. Casey, Vice President, Department of Market Regulation, CBOE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated November 7, 1995 (''November 7 Letter'').

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[8] Specifically, the Commission finds that the Exchange's proposal to specify certain duties of CBOE members in effecting an options transaction on the CBOE that is part of a stock-option or stock-option combination order strikes a reasonable balance between the Commission's mandate under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

The Commission believes that it is appropriate for the Exchange to clarify the conditions and requirements that CBOE members must observe when executing and cancelling multi-market orders. The Commission understands that complex multi-market orders have become more prevalent, and believes that the proposed rule change addresses the special considerations that apply when executing and cancelling such transactions. The Commission believes that it is reasonable to require a member announcing a multi-market order to a trading crowd to disclose all legs of the order and identify the specific markets and prices at which the non-option leg(s) are to be filled.

Moreover, the Commission believes that it is reasonable to require the parties to the transaction to take steps immediately to transmit the non-option leg(s) to the identified markets for execution. The Commission understands that if a party to the transaction does not take steps immediately to execute the non-option leg(s) of a multi-market order, that party is subject to CBOE Rule 4.1, which prohibits conduct inconsistent with just an equitable principles of trade. Accordingly, the Commission believes that by clarifying the duties and obligations regarding the execution of multi-market orders, this proposal will help to ensure that the non-option leg(s) of a multi-market order are sent immediately to the identified markets for execution.[9]

The Commission also believes that members executing multi-market orders should only be allowed to cancel the option leg(s) of the stock-option transaction under limited circumstances. The Exchange proposes that a trade may be cancelled at the request of any member that is a party to that trade only if market conditions in any non-Exchange market prevent the execution of the non-option leg(s) at the price(s) agreed upon.[10] The types of ''market conditions'' arising in a non-CBOE market that would be sufficient under proposed Rule 6.48(b)(ii) to justify cancellation of the CBOE leg(s) of a multi-market order, include a sudden change in the price of the underlying securities prior to execution of the stock trade, and a trading halt or systems failure that precludes immediate execution of the stock trade at the agreed upon price.[11]

The Commission also notes that the priority principles regarding stock-option, and stock-option combination orders, apply to transactions covered by this proposed rule change.[12] In light of the priorities afforded to such transactions, the Commission believes that the option leg(s) of a multi-market order should be allowed to be cancelled only under the limited circumstances described above. The Commission believes that the Exchange's proposed rule change appropriately addresses this concern.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–CBOE–95–16), as amended, is approved.

For the Commission, by the Division of Market Regulation, prusuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29382 Filed 12–1–95; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b)(5).

[9] *See* November 7 Letter, *supra* note 7.

[10] *See* CBOE Rule 6.48(b)(ii). *See also* Amendment No. 1, *supra* note 3.

[11] *See* June 30 Letter, *supra* note 3.

[12] Under CBOE Rule 6.45, stock-option orders, as defined in CBOE Rule 1.1(ii)(a), may attain priority over the trading crowd (but never over the limit order book) when the option leg trades at a price that is at least equivalent to quotes in the crowd. Additionally, stock-option combinations will take priority over orders in the crowd when all legs of the combination trade at a price that is at least equivalent to quotes in the crowd. Stock-option combinations will also attain priority over the limit order book, when one leg of the transaction trades at a price that is better than the corresponding bid or offer in the book and the remaining legs of the transaction trades at a price that is at least equivalent to the established bids or offers in the crowd or book. *See* Securities Exchange Act Release No. 34764 (September 30, 1994), 59 FR 51223 (October 7, 1994).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[Release No. 34–36517; File No. SR–NASD–95–51]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Rearranging of Rules and New Rule Numbering System

November 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 3, 1995 the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to its Rules and various interpretations thereto. This and other material now contained in the NASD Manual is proposed to be rearranged, so that the complete contents of the Manual will be replaced. A binder containing the complete text of the revised Rules of the Association as well as a chart converting the old manual into its revised format is available for inspection at the Commission's Public Reference Room. A summary of the order of material filed with the Commission is reprinted below:

* * * * *

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II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change is part of a multi-phase program in which the NASD is reorganizing the NASD Manual to make it more usable by members and other users of the Manual. The present rule change is a non-substantive reordering of the existing Rules, interpretations, and other provisions of the Manual to establish a more logical progression of Rules within the Manual. All Rules in the NASD Manual, including not only the current Rules of Fair Practice but also such specialized Rules as the PORTAL Rules, Nasdaq Rules, Code of Arbitration Procedure, and so forth, have been numbered consecutively throughout the Manual and considered together as ''Rules.'' In addition, a common numbering and naming scheme for subdivisions within a Rule has been used. Discussion of specific changes is set forth below.

(1) Rules Terminology. The change in terminology from ''Rules of Fair Practice'' to ''Rules'' has been made in all Rules in which such terminology appears. As described above, the Rules now include not only the former Rules of Fair Practice, but also all other Rules and Codes of the NASD, by whatever name they have been known. Rules and

other material that did not previously have titles have been given descriptive titles as part of the revision.

(2) Categories. The Rules are no longer divided into Articles, but are numbered from beginning to end. Major categories, numbered in the thousands, include Membership and Registration Rules, Conduct Rules, Marketplace Rules, and Procedural Rules. Subcategories of Rules are numbered in the hundreds or tens, as appropriate, with individual Rules at the tens or unit level. Where individual Rules that would normally be numbered at the tens level exceed the numbers available, they have been numbered at the unit level instead, to allow adequate numbers for each Rule.

(3) Paragraph Numbering. A uniform method of numbering the various paragraph levels within Rules have been used throughout. Thus, subdivisions within a Rule have been renumbered as follows:

(a)
(1)
(A)
(i)
a.
1.
A.
i.

Where there were unnumbered subparagraphs within a Rule, they have generally been given numbers to facilitate reference to them.

(4) Names of Rule Subdivisions. The terms used to refer to parts of Rules have been made uniform as follows:

Rule 1001
paragraph (a)
subparagraph (1)
subparagraph (A)
subparagraph (i)
etc.

In referring to a provision that has multiple levels, the name of the largest level has been used wherever possible, such as Rule 1000(a)(1), or paragraph (a)(1)(A). In this method, the term ''subparagraph'' is normally used only when referring to lower levels within the same Rule, as in ''subparagraph (i) of this Rule,'' or to multiple subparagraphs, as in ''subparagraphs (2)(A) and (B) of paragraph (a).''

(5) Interpretive Material. Some Interpretations have been converted to Rule form as part of this rule change. Interpretative material that has not been converted to Rule form, including Interpretations, Resolutions, Explanations, Policies, and Guidelines, has been given the designation ''IM,'' for ''Interpretative Material.'' This was done to provide uniformity to the various designations in the current Manual. All Interpretive Material in the Rules of the Association is numbered with ''IM–'' followed by the number(s) of the Rule or Rules it interprets. Interpretive Material in the By-Laws and Schedules A and B has been left as it is currently, since those sections are not part of the Rules numbering scheme.

(6) Terms and Abbreviations. The terms ''Association,'' ''Corporation'' and ''NASD'' are presently used alternately in some of the Association's existing Rules when referring to the NASD. To establish uniformity, the term ''Association'' has been used throughout the Rules when referring to the NASD. The By-laws will continue to use the term ''Corporation.'' When reference is made in the Rules or Interpretative Material to the ''Securities and Exchange Commission,'' it has been shortened to ''SEC'' or ''Commission.'' In the same way, other terms that are adequately defined in the By-Laws or the definitional portion of the Rules (Rule 0120) have not been redefined in individual Rules. Therefore, such terms as ''the Act'' have been used without further description unless such usage would be confusing in the particular context. References to SEC Rules are preceded by the designation ''SEC,'' such as in ''SEC Rule 11Aa3–2,'' in order to avoid confusion with the Rules of the Association. Code of Federal Regulations (CFR) citations to well-known SEC rules have been deleted. They were infrequently used in the Manual and are not thought to be helpful for most users of the Manual; therefore, only the SEC Rule number has been used in most instances.

(7) Indentation. A common system of indentation and paragraph structure has been used within the Rules, whereby each succeeding subdivision level is indented about five spaces further than the next higher level. This system, together with the new paragraph numbering system, should make it easier for Manual users to determine which provisions are subsidiary to others.

(8) Technical Corrections. In several instances, a careful review of the Rules for this rule change revealed typographical, grammatical, or cross-referencing errors, which were corrected when it was obvious to NASD staff that an error had occurred. Many such corrections have been footnoted in the rule change. Minor changes to punctuation and capitalization have also been made for consistency.

The NASD plans to train key staff members in the above style and numbering conventions, so that future rule changes will conform to the new style and keep the Manual clear and consistent.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[1] in that the proposed rule change does not alter the substance of the NASD's By-Laws or Rules; rather, the proposed rule change simplifies the layout of the NASD Manual and makes it easier to use. Making the NASD Manual easier to use enhances the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received by the NASD.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[1] 15 U.S.C. 78o–3.

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29430 Filed 12–1–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36514; International Series Release No. 890; File No. SR–NYSE–95–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Specifications and Content Outline for the Japan Module of the General Securities Registered Representative Examination (Series 47)

November 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 25, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed with the Commission specifications and a content outline for the Japan module (Series 47) of the General Securities Registered Representative Examination (Series 7).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Presently, registered representatives in Japan who wish to sell securities in the United States must qualify as registered representatives in the U.S. by successfully completing the Series 7. In Japan, U.S. and other foreign securities professionals may qualify as securities sales representatives by passing a qualification exam [2] or by meeting experiential requirements. In order to reduce duplication of qualification requirements, the Exchange has developed the Series 47 as a subset of the Series 7 to test the Japanese registered representatives' knowledge of U.S. securities laws, markets, investment products, and sales practices. Qualified Japanese securities professionals can satisfy the Exchange's examination requirements by obtaining a passing score on the Series 47 module.

Since 1991, the Exchange has provided a similar, 90-question qualification vehicle for United Kingdom approved registered representatives wishing to sell securities in the U.S., the Limited Registered Representative Examination (Series 17).[3] The Exchange also has filed for Commission approval examination specifications and a content outline for a Canadian module of the General Securities Registered Representatives Examination (Series 37 & Series 38).[4] The Series 47 module has been developed following procedures like those used for the Series 17 and 37 modules.

To determine the applicable Series 7 content areas not covered in the qualification examinations for Japanese registered representatives, the Exchange's staff conducted a thorough review of the content covered by the Securities Sales Representative Qualification Examination and supporting materials, including translations of Japan's securities laws and regulations. in addition, the Exchange's staff exchanged detailed correspondence and had discussions with the staff of the Japan Securities Dealers Association.[5] Through this review, the Exchange's staff identified for inclusion in the Series 47 those topics that are included in the Series 7 but are not covered, or covered in sufficient detail, in the Japanese qualification materials. As a result, the Series 47 consists of 160 questions covering subject matter that is unique to the U.S. The topics are weighted in the module to correspond to the relative emphasis given these topics in the Series 7.

The Exchange understands that the National Association of Securities Dealers, Inc. (''NASD'') will submit a proposal to the Commission that would amend the NASD's rules such that the Series 47 would satisfy the NASD's qualification requirements. The Series 47, however, will not qualify Japanese securities professionals to transact business in municipal securities. Any individuals wishing to do so will be required to pass the Series 52 (Municipal Securities Representative Examination).

2. Statutory Basis

The statutory basis for the Series 47 is in Section 6(c)(3)(B) [6] of the Act. Under this section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] All of the applicants, both foreign and domestic, who do not meet the experiential requirements must pass the Securities Sales Representative Qualification Examination. This test is composed of the Class 1 examination, the Class 2 examination, and the Investment, Trust, and Bond examination. An applicant's experience and area of interest determines which parts of the examination are applicable. Telephone conversation between Mary Anne Furlong, Director, Rule & Interpretive Standards, NYSE, and Anthony Pecora, Attorney, SEC (Nov. 6, 1995).

[3] Securities Exchange Act Release No. 27967 (May 1, 1990), 55 FR 19131 (approving File No. SR–NYSE–89–22).

[4] Securities Exchange Act Release No. 36378 (Oct. 16, 1995), 60 FR 54401 (noticing File No. SR–NYSE–95–29).

[5] The Japan Securities Dealers Association is the regulatory authority responsible for developing course materials, test materials, and qualification examinations for people wishing to become a registered representative in Japan. Telephone conversation between Mary Anne Furlong, Director, Rule & Interpretive Standards, NYSE, and Anthony Pecora, Attorney, SEC (Nov. 6, 1995).

[6] 14 U.S.C. 78f(c)(3)(B).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR–NYSE–95–36 and should be submitted by December 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29387 Filed 12–1–95; 8:45 am]

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[1] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–36515; File No. SR–Phlx–95–58]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Trader Registration and the Use of the Series 7A Examination

November 27, 1995.

On September 22, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder, a proposed rule change to require registration of persons who solicit or handle business in securities and are compensated by a member or participant organization for which the Phlx is the Designated Examining Authority (''DEA''). On October 6, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change amending paragraph (c)(ii) of Rule 604, which names the Series 7A as the appropriate examination for Limited Registration/Floor Members,[1] to clarify that this is the appropriate examination for such members only, not all members who conduct a public business from the equity trading floor.[2]

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 36395 (October 20, 1995), 60 FR 54904 (October 26, 1995). No comments were received on the proposal.

Currently, the Exchange requires Series 7 Registered Representatives to register with the Exchange on Form U–4 pursuant to Rule 604(a) and Limited Registration/Floor Members to register pursuant to Rule 604(c). However, there is no requirement for proprietary ''upstairs'' traders (*i.e.*, those who trade for the firm's own account) to register with the Exchange. This proposal adopts such a requirement as Rule 604(d). Similar to Rules 604 (a) and (c), the proposal would require registration on Form U–4. This form is currently used in the Exchange's membership application process for prospective members or participants, as well as the officers, shareholders and directors of such organizations. In order to prevent duplicative registration, the proposal would not apply to persons who are otherwise registered with the Exchange.

The proposed rule change also seeks to amend paragraph (c)(ii) of Rule 604. Although the organization of Rule 604, as well as the intent behind its adoption, indicates that paragraph (c) and subparagraph (ii) thereunder apply only to Limited Registration/Floor Members,[3] on its face the text of 604(c)(ii) can be construed to apply to all members conducting a public business. The amendment adds limiting language to Rule 604(c)(ii) to clarify that the Series 7A is the appropriate examination for Limited Registration/Floor Members, not all members conducting a public business from the equity trading floor.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[4] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

The Commission believes that requiring a firm's proprietary traders to register with the Exchange will aid in the prevention of fraudulent and manipulative acts by allowing the Exchange to maintain a complete record of those trading for a member or participant organization, not just persons handling customer accounts. The Form U–4 will provide background information on such traders, as well as a basis for further Exchange research if needed, thereby enhancing the Exchange's examination program.

The Commission also believes that the amendment to Rule 604(c)(ii) will enhance member compliance with this rule. By specifically naming floor members as the parties for whom the

[1] A Limited Registration/Floor Member is a member who conducts a public business that is limited to accepting orders from professional customers for execution on the trading floor. The Series 7A examination is a module of the Series 7 (the General Securities Registered Representative Examination) developed to test the knowledge of relevant securities laws and Exchange rules required of such members. *See* Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993) (File No. SR–NYSE–93–10).

[2] *See* letter from Gerald O'Connell, First Vice President Market Regulation and Trading Operations, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated October 3, 1995. In Amendment No. 1 the Exchange explained the purpose of its proposed amendment to Rule 604(c)(ii).

[3] *See* Securities Exchange Act Release No. 35258 (January 20, 1995), 60 FR 5449 (January 27, 1995) (File No. SR–Phlx–94–15) (order approving the Phlx's adoption of the Limited Registration/Floor Member status and its use of the Series 7A for such members).

[4] 15 U.S.C. 78f(b).

Series 7A is the appropriate examination, members will be able to readily discern whether the Series 7A requirement is applicable to them.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–Phlx–95–58) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29388 Filed 12–1–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21543; 812–8972]

Allied Capital Corporation; Notice of Application

November 27, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Allied Capital Corporation (the ''Company'').

RELEVANT ACT SECTIONS: Order requested under section 61(a)(3)(B)(i)(II) of the Act.

SUMMARY OF APPLICATION: The Company requests an order approving a proposal to issue stock options to directors who are not officers or employees of the Company.

FILING DATE: The application was filed on May 5, 1994 and amended on June 24, 1994, July 31, 1995, and November 22, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1666 K Street, N.W., Ninth Floor, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Company is a closed-end management investment company that has elected to be regulated as a business development company under the Act. It has two active wholly-owned subsidiaries: Allied Investment Corporation (''Allied Investment'') and Allied Capital Financial Corporation (''Allied Financial''), which are registered under the Act as closed-end investment companies. Allied Investment is licensed by the U.S. Small Business Administration (the ''SBA'') as a small business investment company, and Allied Financial is licensed by the SBA as a specialized small business investment company.

2. The Company invests in and lends to privately-owned small businesses directly and through its wholly-owned subsidiaries. It provides debt, mezzanine and equity financing for small growth companies, for leveraged buyouts of such companies, for note purchases and loan restructurings and for special situations, such as acquisitions, buyouts, recapitalizations and bridge financings of such companies. The Company also provides financing to private and small public companies through its purchase of convertible debentures. The Company's investments generally take the form of loans with equity features, such as warrants or conversion privileges. The typical maturity of such a loan made by the Company is seven years, although loan maturities vary. The Company also makes senior loans without equity features. The Company's emphasis is on low- to medium-technology businesses, such as broadcasting, packaging manufacturers, franchise operations, speciality manufacturing, environmental concerns, wholesale distribution and commodities storage and retail operations. The Company makes available significant managerial assistance to its portfolio companies, as do the Company's subsidiaries.

3. The Company and its investment adviser have entered into an investment advisory agreement that provides that the fees paid and payable to the investment adviser are based on the value of the Company's assets, and do not depend in any respect upon any capital gains of the Company or the capital appreciation of any of its funds. The Company does not have a profit-sharing plan described in section 57(n) of the Act.

4. The Company's stock option plan (the ''Option Plan'') was adopted and approved in 1983, and has been amended on several occasions. In February 1994, the Company's board of directors adopted further amendments to the Option Plan, which were approved by the Company's stockholders in May 1994. Those amendments increased the number of shares reserved for issuance under the Option Plan and provided for the automatic, one-time grant to each person who serves as a director of the Company and is not an officer or employee of the Company or an employee of its investment adviser (each, a ''non-officer director'') of an option to purchase 10,000 shares of the Company's common stock.

5. The Option Plan provides for an automatic, one-time option grant to each person serving as a non-officer director on the date on which the issuance of options to non-officer directors is (i) authorized by the stockholders of the Company or (ii) approved by SEC order, whichever is later. The Option Plan also provides for an automatic, one-time option grant to each person who thereafter is elected initially as a non-officer director. Any automatic, one-time grant to a non-officer director will entitle the recipient to acquire 10,000 shares of the Company's common stock at an exercise price that is not less than the fair market value[1] of a share of the Company's common stock at the date of issuance of the option. Each option vests in three annual installments, with the first installment vesting on the date of issuance of the option and the other two installments vesting on the first and second anniversaries of the date of issuance of the option. Each option expires on the earliest of (a) the tenth anniversary of its date of issuance, (b) 60 days after the optionee ceases to serve as a director of the Company for any reason other than death or permanent and total disability, (c) one year after the date on which the optionee dies or becomes permanently and totally disabled, or (d) the date on

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

[1] For purposes of the Option Plan, the fair market value of the shares is defined as the closing sale price as quoted on the National Association of Securities Dealers Automated Quotation System for the date of issuance of the option.

which the option is fully exercised. The Option Plan provides that all such options are non-transferable, except for disposition by will or intestacy, and are exercisable during the life of the optionee only by him or her.

6. The Company currently has five non-officer directors. Upon the SEC's issuance of an order approving the option grants, those persons will receive options covering an aggregate of 50,000 shares. The 10,000 shares covered by each grant to a non-officer director would represent 0.16%, and the 50,000 shares covered by the grants to the five current non-officer directors would represent 0.81%, of the 6,174,047 shares of the Company's common stock outstanding as of June 30, 1995. As of June 30, 1995, there was an aggregate of 866,572 shares subject to then-outstanding options granted to officers of the Company under the Option Plan, and 84,951 shares available for future grants under the Option Plan (not including the 50,000 shares underlying the options proposed to be issued to the current non-officer directors). The shares subject to such then-outstanding options represent 14.03% of the Company's common stock outstanding on June 30, 1995; if those shares are increased by the 50,000 shares underlying the options proposed to be grated to current non-officer directors, they represent 14.85% of the Company's shares then outstanding. The Company has no other outstanding options, warrants or rights.

7. Non-officer directors are actively involved in managing the Company and monitoring the operation of its portfolio companies. Each non-officer director serves on at least one committee of the Company's board, and serves as a director of at least one of the Company's subsidiaries. In addition, many of the non-officer directors have experience in the industries in which the Company regularly invests, and provide analysis and advice to the Company regarding prospective investments and in managing the portfolio companies in which the Company has invested.

8. Every investment transaction by the Company requires prior express approval by its board of directors. Each director is provided, well in advance of each board meeting, a detailed narrative outlining the format of each proposed investment, restructuring and follow-on financing transaction under consideration. Whether in the context of a new investment or restructuring, follow-on financing, or disposition of an existing investment, the Company's directors analyze the reports and materials provided, discuss questions and issues with the responsible investment officer and with each other and make and approve recommendations with respect to each such investment decision.

9. The Company also relies upon its directors to review and consider the best use of the Company's resources. The directors review and evaluate reports of outstanding commitments, required reserves for follow-on financing and funds available for future investment for the purpose of evaluating and making these resource allocations. At least once each calendar quarter, directors of the Company review portfolio investments that are non-performing or performing inadequately and evaluate the best course of action for the Company to take under the circumstances. In addition, on a calendar quarter basis, the directors of the Company undertake a good faith valuation of the Company's investments for which no independent market valuations are available, which constitute substantially all of the Company's investments.

10. Non-officer directors frequently advise the investment officers serving the Company in the due diligence process regarding any proposed investment in companies operating in industries of which they have knowledge and expertise. Non-officer directors with industry or other relevant expertise also participate in the analysis of portfolio companies that are performing below expectations or are in a work-out situation.

11. Non-officer directors participate in the analysis of portfolio companies that are performing at or above expectations, and advise the investment officers serving the Company in efforts to monitor or improve performance by such portfolio companies, improve banking or other commercial relationships and consider or prepare for public offerings, acquisitions or the like.

12. For these services, the Company pays its non-officer directors (as well as its officer-directors) $1,000 for each meeting of its Board or any committee thereof[2] attended. Allied Investment and Allied Financial each also pays its directors $1,000 for each meeting of its board of directors that the director attends, although a director is not paid for attending such meetings of the Allied Investment or Allied Financial Boards on the same day as a meeting of the Company's Board.

[2] Non-officer directors are paid $500 for participation in any committee meeting held on the same day as a meeting of the Company's Board.

Applicant's Legal Analysis

1. Section 61(a)(3)(B)(i)(II) of the Act permits a business development company to issue options to purchase its voting securities to its non-officer, non-employee directors pursuant to an executive compensation plan subject to certain requirements, which include the proposal to issue such options being authorized by the stockholders of the company and approved by the SEC on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its stockholders.

2. The Company believes that its proposal to issue options to its non-officer directors satisfies all of such statutory requirements other than SEC approval (including the requirement that if the amount of voting securities that would result from the exercise of outstanding options issued to the Company's directors, officers, and employees would exceed 15% of the Company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding options at the time of issuance may not exceed 20% of the outstanding voting securities of the Company) and that granting each non-officer director an option under the Option Plan is fair and reasonable. Non-officer directors provide to the Company skills and experience necessary for management and oversight of the Company's investments and operations, and often have specific experience with respect to industries in which the Company makes a significant number of investments. The Company believes that its ability to make an automatic option grant under the Option Plan to non-officer directors provides a means of retaining the services of its current non-officer directors and of attracting qualified persons to serve as non-officer directors in the future. The Company also believes that such options are a necessary adjunct to its directors' fees to provide fair and reasonable compensation for the services and attention devoted by the non-officer directors. Each current non-officer director makes a significant contribution to the management of the Company's business and to analysis and supervision of its portfolio investments. The Company believes that any non-officer directors who are elected initially after issuance of the SEC's order will provide similar services and devote similar time and attention to serving the Company.

3. The projected compensatory value of an automatic, one-time grant to the Company's non-officer directors of a

stock option to purchase 10,000 shares at fair market value is well within the range of reasonable director compensation in consideration of the time commitment described above, especially given that realization of such compensation is contingent upon the Company's market performance. Automatic, one-time option grants to current and future non-officer directors permit the Company to devote its cash resources to additional investments and not to increases in directors' fees to retain qualified non-officer directors or to attract replacements. Most importantly, as a method of compensation which is contingent on the Company's stock performance, such stock option awards serve the best interest of the stockholders of the Company by reinforcing the alignment of the interests of non-officer directors and stockholders of the Company.

4. For all of these reasons, the Company believes that providing for the automatic, one-time grant of stock options to purchase 10,000 shares at fair market value to each of the Company's current and future non-officer directors is fair and reasonable and does not involve overreaching of the Company or its stockholders.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29385 Filed 12–1–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21544; 812–8986]

Allied Capital Corporation II; Notice of Application

November 27, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Allied Capital Corporation II (the ''Company'').

RELEVANT ACT SECTIONS: Order requested under section 61(a)(3)(B)(i)(II) of the Act.

SUMMARY OF APPLICATION: The Company requests an order approving a proposal to issue stock options to directors who are not officers or employees of the Company.

FILING DATE: The application was filed on May 12, 1994 and amended on June 24, 1994, July 31, 1995, and November 22, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1666 K Street, N.W., Ninth Floor, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Company is a closed-end management investment company that has elected to be regulated as a business development company under the 1940 Act. It has two wholly-owned subsidiaries: Allied Investment Corporation II (''Allied Investment II'') and Allied Financial Corporation II (''Allied Financial II''), which are registered under the Act as closed-end investment companies. Allied Investment II is licensed by the U.S. Small Business Administration (the ''SBA'') as a small business investment company (''SBIC''). Allied Financial II has applied to the SBA to be licensed as a specialized small business investment company (''SSBIC''), and makes certain investments pending issuance of its license as a SSBIC.

2. The Company invests in and lends to privately-owned small businesses directly and through its subsidiaries. It provides debt, mezzanine and equity financing for small growth companies, for leveraged buyouts of such companies, for note purchases and loan restructurings and for special situations, such as acquisitions, buyouts, recapitalizations and bridge financings of such companies. The Company also provides financing to private and small public companies through its purchase of convertible debentures. The Company's investments generally take the form of loans with equity features, such as warrants or conversion privileges. The Company also makes senior loans without equity features. The Company's emphasis is on low- to medium-technology businesses, such as broadcasting, manufacturing, wholesale distribution and commodities storage, software and service providers and wholesale and retail operations. The Company makes available significant managerial assistance to its portfolio companies, as do the Company's subsidiaries.

3. The Company and its investment adviser have entered into an investment advisory agreement that provides that the fees paid and payable to the investment adviser are based on the value of the Company's assets and do not depend in any respect upon any capital gains of the Company or the capital appreciation of any of its funds. The Company does not have a profit-sharing plan described in Section 57(n) of the Act.

4. The Company's stock option plan (the ''Option Plan'') was adopted and approved in 1990, and has been amended on several occasions. In February 1994, the Company's Board of Directors adopted further amendments to the Option Plan, which were approved by the Company's stockholders in May 1994. Those amendments increased the number of shares reserved for issuance under the Option Plan and provided for the automatic, one-time grant to each person who serves as a director of the Company and is not an officer or employee of the Company or an employee of its investment adviser (each, a ''non-officer director'') of an option to purchase 10,000 shares of the Company's common stock.

5. The Option Plan provides for an automatic, one-time option grant to each person serving as a non-officer director on the date on which the issuance of options to non-officer directors is (i) authorized by the stockholders of the Company or (ii) approved by SEC order, whichever is later. The Option Plan also provides for an automatic, one-time option grant to each person who thereafter is elected initially as a non-officer director. Any automatic, one-time grant to a non-officer director will entitle the recipient to acquire 10,000 shares of the Company's common stock at an exercise price that is not less than the fair market value of a share of the Company's common stock at the date of issuance of the option. Each option

vests in three annual installments, with the first installment vesting on the date of issuance of the option and the other two installments vesting on the first and second anniversaries of the date of the issuance of the option. Each option expires on the earliest of (a) the tenth anniversary of its date of issuance, (b) 60 days after the optionee ceases to serve as a director of the Company for any reason other than death or permanent and total disability, (c) one year after the date on which the optionee dies or becomes permanently and totally disabled, or (d) the date on which the option is fully exercised. The Option Plan provides that all such options are non-transferable, except for disposition by will or intestacy, and are exercisable during the life of the optionee only by him or her.

6. The Company currently has five non-officer directors. Upon the Commission's issuance of an order approving the option grants under the Option Plan to non-officer directors, those persons will receive options covering an aggregate of 50,000 shares. The 10,000 shares covered by each grant to a non-officer director would represent 0.14%, and the 50,000 shares covered by the grants to the five current non-officer directors would represent 0.72%, of the 6,938,191 shares of the Company's common stock outstanding as of June 30, 1995. As of June 30, 1995, there was an aggregate of 719,600 shares subject to then-outstanding options granted to officers of the Company under the Option Plan, and 317,744 shares available for future grants under the Option Plan (not including the 50,000 shares underlying the options proposed to be issued to the current non-officer directors). The shares subject to such then-outstanding options represent 10.37% of the Company's common stock outstanding on June 30, 1995; if those shares are increased by the 50,000 shares underlying the options proposed to be granted to current non-officer directors, they represent 11.09% of the Company's shares then outstanding. The Company has no other outstanding options, warrants or rights.

7. Non-officer directors are actively involved in managing the Company and in monitoring of the operation of its portfolio companies. Each non-officer director serves on at least one committee of the Company's Board, and serves as a director of at least one of the Company's subsidiaries. In addition, many of the non-officer directors have experience in the industries in which the Company regularly invests, and provide analysis and advice to the Company regarding prospective investments and in managing the portfolio companies in which the Company has invested.

8. Every investment transaction by the Company requires prior express approval by its board of directors. Each director is provided, well in advance of each board meeting, a detailed narrative outlining the format of each proposed investment, restructuring and follow-on financing transaction under consideration. Whether in the context of a new investment or restructuring, follow-on financing, or disposition of an existing investment, the Company's directors analyze the reports and materials provided, discuss questions and issues with the responsible investment officer and with each other and make and approve recommendations with respect to each such investment decision.

9. The Company also relies upon its directors to review and consider the best use of the Company's resources. The directors review and evaluate reports of outstanding commitments, required reserves for follow-on financing and funds available for future investment for the purpose of evaluating and making these resource allocations. At least once each calendar quarter, directors of the Company review portfolio investments that are non-performing or performing inadequately and evaluate the best course of action for the Company to take under the circumstances. In addition, on a calendar quarter basis, the directors of the Company undertake a good faith valuation of the Company's investments for which no independent market valuations are available, which constitute substantially all of the Company's investments.

10. Non-officer directors frequently advise the investment officers serving the Company in the due diligence process regarding any proposed investment in companies operating in industries of which they have knowledge and expertise. Non-officer directors with industry or other relevant expertise also participate in the analysis or portfolio companies that are performing below expectations or are in a work-out situation.

11. Non-officer directors participate in the analysis of portfolio companies that are performing at or above expectations, and advise the investment officers serving the Company in efforts to monitor performance of such portfolio companies, improve banking or other commercial relationships and consider or prepare for public offerings, acquisitions or the like.

12. For these services, the Company pays its non-officer directors (as well as its officer-directors) $1,000 for each meeting of its Board or any committee thereof [1] attended. Allied Investment II and Allied Financial II each also pays its directors $1,000 for each meeting of its board of directors that the director attends, although a director is not paid for attending such meetings of the Allied Investment II or Allied Financial II Boards on the same day as a meeting of the Company's Board.

Applicant's Legal Analysis

1. Section 61(a)(3)(B)(i)(II) of the Act permits a business development company to issue options to purchase its voting securities to its non-officer, non-employee directors pursuant to an executive compensation plan subject to certain conditions, which include the proposal to issue such options being authorized by the stockholders of the company and approved by the SEC on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its stockholders.

2. The Company believes that its proposal to issue options to its non-officer directors satisfies all of such statutory conditions other than SEC approval (including the requirement that if the amount of voting securities that would result from the exercise of outstanding options issued to the Company's directors, officers, and employees would exceed 15% of the Company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding options at the time of issuance may not exceed 20% of the outstanding voting securities of the Company) and that granting each non-officer director an option under the Option Plan is fair and reasonable. Non-officer directors provide to the Company skills and experience necessary for management and oversight of the Company's investments and operations, and often have specific experience with respect to industries in which the Company makes a significant number of investments. The Company believes that its ability to make an automatic option grant under the Option Plan to non-officer directors provides a means of retaining the services of its current non-officer directors and of attracting qualified persons to serve as non-officer directors in the future. The Company also believes that such options are a necessary adjunct to its directors' fees to provide fair and reasonable compensation for the services and attention devoted by the non-officer

[1] Non-officer directors are paid $500 for participation in any committee meeting held on the same day as a meeting of the Company's Board.

directors. Each current non-officer director makes a significant contribution to the management of the Company's business and to analysis and supervision of its portfolio investments. The Company believes that any non-officer directors who are elected initially after issuance of the SEC's order will provide similar services and devote similar time and attention to serving the Company.

3. The projected compensatory value of an automatic, one-time grant to the Company's non-officer directors of a stock option to purchase 10,000 shares at fair market value is well within the range of reasonable director compensation in consideration of the time commitment described above, especially given that realization of such compensation is contingent upon the Company's market performance. Automatic, one-time option grants to current and future non-officer directors permit the Company to devote its cash resources to additional investments and not to increases in directors' fees to retain qualified non-officer directors or to attract replacements. Most importantly, as a method of compensation which is contingent on the Company's stock performance, such stock option awards serve the best interest of the stockholders of the Company by reinforcing the alignment of the interests of non-officer directors and stockholders of the Company.

4. For all of these reasons, the Company submits that providing for the automatic, one-time grant of stock options to purchase 10,000 shares at fair market value to each of the Company's current and future non-officer directors is fair and reasonable and does not involve overreaching of the Company or its stockholders.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29384 Filed 12–1–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21542; 812–9010]

Allied Capital Lending Corporation; Notice of Application

November 27, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Allied Capital Corporation (the ''Company'').

RELEVANT ACT SECTIONS: Order requested under section 61(a)(3)(B)(i)(II) of the Act.

SUMMARY OF APPLICATION: The Company requests an order approving a proposal to issue stock options to its directors who are not officers or employees of the Company.

FILING DATE: The application was filed on May 20, 1994 and amended on June 24, 1994, July 31, 1995, and November 22, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 22, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1666 K Street, N.W., Ninth Floor, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Company is a closed-end management investment company that has elected to be regulated as a business development company under the Act. The Company is a small business lending company (''SBLC'') approved by the U.S. Small Business Administration (the ''SBA''). The Company participates in the SBA's section 7(a) guaranteed loan program, under which the SBA will guarantee up to 90% of certain qualifying loans to small business concerns. The Company, through a subsidiary, also provides first mortgage commercial loans in conjunction with the SBA 504 loan program and as companion loans to section 7(a) guaranteed loans.

2. The Company lends to privately-owned small businesses directly. It provides loans to qualifying small businesses to acquire or refinance real estate, machinery or equipment, or to provide working capital. Loans made by the Company are secured by a mortgage or other lien on the assets of the borrower and, frequently, of its principals. The Company's loans are diversified in different industries and geographic regions of the United States. At December 31, 1994, the Company had in its portfolio or was servicing loans to, among others, hotels and motels, restaurants, manufacturers, retail shops, food stores, professional service providers, laundries and cleaners, home furnishings concerns, gasoline stations, business services firms, recreational services providers, automobile exhaust repair shops, personal services providers and automotive repair concerns. The Company makes available significant managerial assistance to companies in its portfolio.

3. As permitted by SBA regulations, the Company systematically sells to investors, without recourse, the guaranteed portions of its loans. Such loan sales generally take place approximately three months after the closing of the loan. The Company continues to service those loans for a servicing fee. At December 31, 1994, the Company was servicing over $116 million aggregate principal amount of loans, of which approximately 72% had been sold to investors.

4. The Company and its investment adviser have entered into an investment advisory agreement that provides that the fees paid and payable to the investment adviser are based on the value of the Company's assets, as determined from time to time, and do not depend in any respect upon any capital gains of the Company or the capital appreciation of any of its funds. The Company does not have a profit-sharing plan described in section 57(n) of the Act.

5. The Company's stock option plan (the ''Option Plan'') was adopted and approved in 1993. In February 1994, the Company's board of directors adopted amendments to the Option Plan, which were approved by the Company's stockholders in May 1994. Those amendments increased the number of shares reserved for issuance under the Option Plan and provided for the automatic, one-time grant to each person who serves as a director and is not an officer or employee of the Company or an employee of its

investment adviser (each, a ''non-officer director''). The grant will consist of giving each non-officer director an option to purchase 10,000 shares of the Company's common stock.

6. The Option Plan provides for an automatic, one-time option grant to each non-officer director on the date on which the issuance of options is (i) authorized by the stockholders of the Company of (ii) approved by SEC order, whichever is later. The Option Plan also provides for an automatic, one-time option grant to each person who thereafter is elected initially as a non-officer director. Any automatic, one-time grant to a non-officer director will entitle the recipient to acquire 10,000 shares of the Company's common stock at an exercise price that is not less than the fair market value of a share of the Company's common stock at the date of issuance of the option or $15.00 per share (the Company's initial public offering price), whichever is greater. Each option vests in three annual installments, with the first installment vesting on the date of issuance of the option and the other two installments vesting on the first and second anniversaries of the date of issuance of the option. Each option expires on the earliest of (a) the tenth anniversary of its date of issuance, (b) 69 days after the optionee ceases to serve as a director of the company for any other reason other than death or permanent and total disability, (c) one year after the date on which the optionee dies or becomes permanently and totally disabled, or (d) the date on which the option is fully exercised. The Option Plan provides that all such options are non-transferable, except for disposition by will or intestacy, and are exercisable during the life of the optionee only by him or her.

7. The Company currently has six non-officer directors. Upon the SEC's issuance of an order approving the option grants, those persons will receive options covering an aggregate of 60,000 shares. The 10,000 shares covered by each grant to a non-officer director would represent 0.23%, and the 60,000 shares covered by the grants to the six current non-officer directors would represent 1.37%, of the Company's 4,377,334 shares outstanding as of June 30, 1995. As of June 30, 1995, there was an aggregate of 433,290 shares subject to then-outstanding options granted to officers of the Company under the Option Plan, and 11,570 shares available for future grants under the Option Plan (not including such 60,000 shares underlying the options proposed to be issued to the current non-officer directors). The shares subject to such then-outstanding options represent 9.90% of the Company's common stock outstanding on June 30, 1995; if those shares are increased by the 60,000 shares underlying the options proposed to be granted to current non-officer directors, they represent 11.27% of the company's shares outstanding on that date; if those shares are increased by the shares remaining available for future grants under the Option Plan, they represent 11.53% of the Company's shares outstanding on that date. The Company has no other outstanding options, warrants or rights.

8. Non-officer directors are actively involved in managing the Company and in reviewing the operation of its portfolio companies. Non-officer directors also generally serve on at least one committee of the Company's Board. Due to their experience and expertise, the non-officer directors make material, substantive contributions in managing the business of the company and the operation of its portfolio companies.

9. The Company recruits persons to serve as non-officer directors who possess specialized knowledge and expertise in business development, small business financing techniques or the industries in which the company focuses its investments. Their experience and expertise permits the Company's non-officer directors to provide unique analysis and advice to the Company regarding prospective loans and management of portfolio companies.

10. The Company's directors establish, review and revise, when necessary, a strict set of criteria for many of the loans that are made by the Company. The Company's directors also review those proposed lending transactions that do not fit within that set of criteria. Each director is provided, well in advance of each Board meeting, a detailed underwriting or credit report regarding each lending transaction under consideration. The Company's directors analyze the reports and materials provided, discuss questions and issues with the Company's management, its responsible officer, and with each other and make and approve recommendations with respect to each such lending decision.

11. The Company also relies upon its directors to review and consider the best use of the Company's resources. The directors review and evaluate reports of outstanding commitments and funds available for future lending for the purpose of evaluating and making these resource allocations. At least once each calendar quarter, directors of the Company review portfolio loans that are non-performing or performing inadequately and evaluate the best course of action for the Company to take under the circumstances. On a calendar quarter basis, the directors of the Company also undertake a good faith valuation of the Company's loans in privately-held portfolio companies, which constitute substantially all of the Company's investments, as independent market valuations rarely are available.

12. For these services, the Company pays its non-officer directors (as well as its officer-directors) $1,000 for each meeting of its Board or any committee thereof [1] attended.

Applicant's Legal Analysis

1. Section 61(a)(3)(B)(i)(II) of the Act permits a business development company to issue options to purchase its voting securities to its non-officer, non-employee directors pursuant to an executive compensation plan subject to certain conditions, which include the proposal to issue such options being authorized by the company's stockholders and approved by the SEC on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its stockholders.

2. The Company believes that its proposal to issue options to its non-officer directors satisfies all of such statutory conditions other than SEC approval (including the requirement that if the amount of voting securities that would result from the exercise of outstanding options issued to the Company's directors, officers, and employees would exceed 15% of the Company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding options at the time of issuance may not exceed 20% of the outstanding voting securities of the Company) and that granting each non-officer director an option under the Option Plan is fair and reasonable. Non-officer directors provide to the Company skills and experience necessary for management and oversight of the Company's loan portfolio and operations, and often have specific experience with commercial lending or with respect to industries in which the Company makes a significant number of loans. The Company believes that its ability to make an automatic option grant under the Option Plan to non-officer directors provides a means of retaining the services of its current non-officer directors and of attracting qualified persons to serve as non-officer

[1] Non-officer directors are paid $500 for participation in any committee meeting held on the same day as a meeting of the Company's board.

directors in the future. The Company also believes that such options are a necessary adjunct to its directors' fees to provide fair and reasonable compensation for the services and attention devoted by the non-officer directors. Each current non-officer director makes a significant contribution to the management of the Company's business and to analysis and supervision of its loan portfolio. The Company believes that any non-officer directors who are elected initially after issuance of the SEC's order will provide similar services and devote similar time and attention to serving the Company.

3. The projected compensatory value of an automatic, one-time grant to the Company's non-officer directors of a stock option to purchase 10,000 shares at fair market value is well within the range of reasonable director compensation in consideration of the time commitment described above, especially given that realization of such compensation is contingent upon the Company's market performance. Automatic, one-time option grants to current and future non-officer directors permit the Company to devote its cash resources to additional investments and not to increases in directors' fees to retain qualified non-officer directors or to attract replacements. Most importantly, as a method of compensation which is contingent on the Company's stock performance, such stock option awards serve the best interest of the Company's stockholders by reinforcing the alignment of the interests of non-officer directors and stockholders of the Company.

4. For all of these reasons, the Company believes that providing for the automatic, one-time grant of stock options to purchase 10,000 shares to each of the Company's current and future non-officer directors is fair and reasonable and does not involve overreaching of the Company or its stockholders.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29386 Filed 12–1–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21545; No. 812–9668]

National Life Insurance Company, et al.

November 27, 1995.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an Exemption pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: National Life Insurance Company (the ''Company''), National Variable Life Insurance Account (the ''Account''), any other separate account established in the future by the Company (the ''Future Accounts'', collectively, with the Account, the ''Accounts'') to support flexible premium variable life insurance policies (the ''Future Contracts,'' collectively, with the Existing Contracts, the ''Contracts'') and Equity Securities, Inc. (the ''Underwriter'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act seeking exemptions from the provisions of Section 27(c)(2) thereof and from Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct from premiums received under the Contracts issued by the Company and the Accounts a charge in an amount that is reasonable in relation to the Company's increased federal income tax burden related to the receipt of such premium payments and that results from the application of Section 848 of the Internal Revenue Code of 1986, as amended (the ''Code'').

FILING DATE: The application was filed on July 14, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 22, 1995, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o D. Russell Morgan, Counsel, National Life Insurance Company, One National Life Drive, Montpelier, Vermont 05604.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicant's Representations

1. The Company, a mutual life insurance company chartered pursuant to the law of the State of Vermont in 1848, is authorized to transact life insurance and annuity business in Vermont and in 50 other jurisdictions. The Company is depositor and sponsor of the Account.

2. The Company established the Account pursuant to Vermont law to support variable life insurance contracts. The Account is registered with the Commission as a unit investment trust and is a ''separate account'' as defined by Rule 0–1(e) under the 1940 Act. The Company anticipates that any Future Account would be registered under the 1940 Act as a unit investment trust and would meet the definition of a separate account in Rule 0–1(e) thereunder.

3. The Account currently has nine sub-accounts, each of which invests in a corresponding portfolio of one of two series-type mutual funds registered with the Commission as open-end, diversified management investment companies: the Market Street Fund and Variable Insurance Products Fund.

4. The Underwriter, an indirect, wholly-owned subsidiary of the Company, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

5. The Existing Contracts are flexible premium variable life insurance contracts.

6. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Code by, among other things, enacting Section 848 thereof. Section 848 changed the federal income taxation of life insurance companies by requiring them to capitalize and amortize over a period of ten years part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income.

7. The amount of expenses that must be capitalized and amortized under Section 848 is generally determined with reference to premium payments for certain categories of life insurance and other contracts (''Specified Contracts''). Thus, for each Specified Contract, an amount of expenses must be capitalized and amortized equal to a percentage of

the current year's net premium payments (*i.e.*, gross premium payments minus return premium payments and reinsurance premium payments) for that contract. The percentage varies, depending on the type of Specified Contract in question, according to a schedule set forth in Section 848(c)(1).

8. Although framed in terms of requiring a portion of a life insurance company's general expenses to be capitalized an amortized, Section 848 in effect accelerates the realization of income from Specified Contracts for federal income tax purposes, and therefore, the payment of taxes on the income generated by those contracts. When the time value of money is taken into account, this has the economic consequence of increasing the tax burden borne by the Company that is attributable to such contracts. Because the amount of general deductions that must be capitalized and amortized is measured by premium payments paid for Specified Contracts, an increased tax burden results from the receipt of those premium payments.

9. The Contracts to which Applicants wish to apply the tax burden charge are among the Specified Contracts. They fall into the category of life insurance contracts for which the percentage of net premium payments that determines the amount of otherwise currently deductible general expenses to be capitalized and amortized with respect to such contracts is 7.7%.

10. The increased tax burden resulting from the applicability of Section 848 to every $10,000 of net premium payments received may be quantified as follows. In the year when the premium payments are received, the Company's general deductions are reduced by $731.50—*i.e.*, an amount equal to (a) 7.7% of $10,000, or $770, minus (b) one-half year's portion of the ten-year amortization, or $38.50. Using a 35% corporate tax rate, this results in an increase in tax for the current year of $256.03. This reduction will be partially offset by increased deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770—$77 in each of the following nine years and $38.50 in the tenth year.

11. In the Company's business judgment, a discount rate of at least 8% is appropriate for use in calculating the present value of its future tax deductions resulting from the amortization described above. For business relating to participating insurance policies, the Company seeks an after tax rate of return on the investment of its surplus of at least 8%. To the extent that surplus must be used by the Company to satisfy its increased federal tax burden under Section 848 resulting from the receipt of premium payments, such surplus is not available to the Company for investment. Thus, the cost to the Company of ''capital'' used to satisfy its increased federal tax burden under Section 848 is, in essence, the Company's after tax rate of return on surplus, and accordingly, the rate of return on surplus is appropriate for use in this present value calculation.[1]

12. Again using a corporate tax rate of 35% and assuming a discount rate of 8%, the present value of the tax effect of the increased deductions allowable in the following ten years, which (as noted above) partially offsets the increased tax burden, comes to $174.59. The effect of Section 848 on the Company in connection with the Existing Contracts is therefore an increased tax burden with a present value of $81.44 for each $10,000 of net premium payments received, (*i.e.*, $256.03 minus $174.59).

13. State premium taxes are deductible in computing federal income taxes. Thus, the Company does not incur incremental income tax when it passes on state premium taxes to contract owners. In contrast, federal income taxes are *not* tax-deductible in computing the Company's federal income taxes. Therefore, in order to compensate fully for the impact of Section 848, the Company must impose an additional charge that would make it whole not only for the $81.44 additional tax burden attributable to Section 848, but for the tax on the additional $81.44 itself. This additional charge can be determined by dividing $81.44 by the complement of the 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $125.29 for each $10,000 of net premium payments, or approximately 1.25% of net premium payments.

14. Tax deductions are of value to the Company only to the extent that it has sufficient gross income to fully use the deductions. However, based on its prior experience, the Company believes that it can reasonably expect to use virtually all future deductions available. That is, the Company believes that it can reasonably expect to have sufficient taxable income in future years to use all deferred acquisition cost deduction.

15. The Company also represents that the 1.25% charge is reasonably related to the Company's increased tax burden under Section 848 of the Code, taking into account the benefit to the Company of the amortization permitted by Section 848, and the use by the Company of a 8% discount rate in computing the future deductions resulting from such amortization, such rate being the equivalent of the Company's cost of capital.

16. The Company believes that a charge of 1.25% of premium payments would reimburse it for the impact of Section 848 (as currently written) on its federal tax liabilities. The Company believes, however, that it would have to increase this charge if future changes in, or interpretations of, Section 848 or any successor provision result in a further increased tax burden due to the receipt of premium payments. Such an increase could result from a change in the corporate tax rate, a change in the 7.7% figure, or a change in the amortization period. The Contracts will or may reserve the right to increase or decrease the 1.25% charge in response to future changes in, or interpretations of, Section 848 or any successor provision that increase or decrease the Company's tax burden. The Company understands, however, that it would need additional exemptions before increasing the charge above 1.25%.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act provides, in relevant part, that the Commission, by order upon application, may exempt any person, security or transaction (or any class or classes of persons, securities or transactions) from provisions of the 1940 Act or any rules thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act, exempting them from the provisions of Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder to the extent necessary to permit Applicants to deduct from premium payments received in connection with the Contracts an amount that is reasonable in relation to the Company's increased federal tax burden related to the receipt of such premium payments and that results from the application of Section 848 of

[1] In determining the cost of capital, the Company considered a number of factors. First, the Company considered its anticipated long-term growth rate. The Company seeks an after-tax rate of return earned on investments that is at least equal to its long-term growth rate. The cost of capital should also represent a fair after-tax rate of return to the Company for investing surplus. This rate can be thought of as consisting of a ''risk-free'' rate of return plus a ''risk premium'' for engaging in this type of business. Other factors taken into consideration were market interest rates and information about the rates of return obtained by other insurance companies. The Company represents that these are appropriate factors to consider in determining its cost of capital.

the Code. The deduction would not be treated as sales load.

Relief From Provisions of Section 27(c)(2) and Rule 6e–3(T)(c)(4)(v)

3. Section 2(a)(35) of the 1940 Act defines ''sales load'' as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

4. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load. Sections 27(a)(1) and 27(h)(1) of the 1940 Act, in effect, limit sales loads on periodic payment plan certificates to 9 percent of total payments.

5. Paragraph (a) of Rule 6e–3(T) requires that a separate account (such as the Accounts) that issues flexible premium variable life insurance contracts, its principal underwriter and its depositor, comply with all provisions of the 1940 Act and rules thereunder applicable to a registered investment company issuing periodic payment plan certificates.

6. Paragraph (b) of Rule 6e–3(T) provides numerous limited conditional exemptions from most such provisions and rules in connection with the offer, sale and administration of flexible premium variable life insurance contracts. For example, Rule 6e–3(T)(b)(13)(iii)(E) provides relief from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of certain charges other than sales load, including ''[t]he deduction of premium or other taxes imposed by any state or other governmental entity.'' Applicants request the relief from Section 27(c)(2) sought in this application only to preclude the possibility that a charge related to the increased burden resulting from Section 848 of the Code is not covered by the exemption provided by Rule 6e–3(T)(b)(13)(iii)(E). Applicants submit that the public policy reasons underlying Rule 6e–3(T)(b)(13)(iii)(E) provide support for the exemption from Section 27(c)(2) requested herein.

7. Paragraph (c)(4) of Rule 63–3(T) defines ''sales load'' (for purposes of the rule) as the excess of any purchase payments over certain itemized charges and adjustments. A tax burden charge, such as the one the Company proposes to deduct, may not fall squarely into any of the itemized categories of charges or adjustments. Consequently, a literal reading of paragraph (c)(4) arguably does not exclude such a charge from sales load. Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load or otherwise subject to the sales load limits of Rule 6e–3(T). Applicants assert that nothing in the administrative history of the Rule (or in the administrative history of Rule 6e–2, its predecessor) suggests that the Commission intended to treat tax charges as sales load.

8. The exemption requested by Applicants is necessary in order for them and any Future Account to rely on certain provision of Rule 6e–3(T)(b)(13), including sub-paragraph (b)(13)(i) thereof, which provides critical exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates only may rely, however, on sub-paragraph (b)(13)(i) if they meet its alternate limits that apply to sales load as defined in paragraph (c)(4). Applicants and Future Accounts generally could not meet these limits if the tax burden charge is included in sales load.

9. The public policy that underlies sub-paragraph (b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants assert that the treatment of a tax burden charge attributable to the receipt of purchase payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses.

10. Applicants assert that the genesis of Rule 6e–3(T)(c)(4) supports this analysis, and suggest that Section 2(a)(35) provides a scale against which the percentage limits of Sections 27(a)(1) and 27(h)(1) may be measured. Applicants submit that Rule 6e–3(T)(c)(4), is simply a more specific articulation of the requirements of Section 2(a)(35) as applied to flexible premium variable life insurance policies. Section 2(a)(35), like Rule 6e–3(T)(c)(4), defines sales load derivatively, treating as sales load the:

> difference between the price of a security to the public and that portion of the proceeds from its sale which is invested or held for investment . . . less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, *issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.* (Emphases added.)

Applicants maintain that the Commission's intent in adopting paragraph (c)(4) of Rule 6e–3(T) was to tailor the general terms of Section 2(a)(35) to flexible premium variable life insurance policies in order, among other things, to facilitate verification by the Commission of compliance with the sales load limits set forth in sub-paragraph (b)(13)(i). According to their analysis, paragraph (c)(4) does not depart, in principal, from Section 2(a)(35).

11. Section 2(a)(35) excludes deductions from purchases payments for ''issue taxes'' from the definition of sales load under the 1940 Act. Applicants suggest that this indicates that it is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act to exclude charges for expenses attributable to federal taxes from sales load. Applicants argue that, by extension, it is equally consistent to exclude such charges, including the tax burden charge described above, from the Rule 6e–3(T)(c)(4) definition of sales load.

12. Applicants argue that the Section 2(a)(35) reference to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' (quoted and emphasized above) suggests that the only charges or deductions intended to fall within the definition of sales load are those that *are* properly chargeable to such activities. Because the proposed tax burden charge will be used to pay costs attributable to the Company's federal tax liabilities, which are not properly chargeable to sales or promotional activities, Applicants assert that language is another indication that not treating such deductions as sales load is consistent with the purposes intended by the policies and provisions of the 1940 Act.

13. Applicants note that the Rule 6e–3(T)(c)(4)(v) limitation of the premium tax exclusion from the definition of ''sales load'' to state premium taxes is probably a historical accident, related to the fact that, when Rule 6e–3(T) was initially adopted in 1984 and when it was amended in 1987, the additional Section 848 tax burden attributable to the receipt of premiums did not exist.

14. Applicants represent that, for the reasons summarized above, deducting a

charge from variable life insurance policy premium payments for an insurer's tax burdens attributable to its receipt of such payments, and excluding the charge from sales load, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. This is because such a charge is, Applicants represent, for a legitimate expense of the insurer and is not designed to cover sales and distribution expenses. Applicants assert that, in adopting Rule 6e–3(T), the Commission considered similar deductions for tax burdens in respect of premium taxes and permitted deductions for such taxes to be made and to be treated as other than sales load. Applicants assert that the propriety of a charge for an insurer's tax burden attributable to premium payments received is the same whether such burden arises under state or federal law.

Request for ''Class Relief''

15. Applicants also request exemptions for any Future Account that the Company may establish to support flexible premium variable life insurance contracts as defined in Rule 6e–3(T)(c)(1). Applicants believe that the terms of any exemption sought for Future Accounts to permit the deduction of a tax burden charge would be substantially identical to those they describe in the application. Applicants assert that any additional requests for exemptive relief for such Future Accounts would present no issues under the 1940 Act that have not already been addressed in the application. Nevertheless, the Company would have to obtain exemptions for each Future Account it establishes unless class relief is granted in response to the application.

16. The requested exemptions are appropriate in the public interest because they would promote competitiveness in the variable life insurance market by eliminating the need for the Company to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having repeatedly to seek the same exemptions would impair the Company's ability to effectively take advantage of business opportunities as they arise. Likewise, the requested exemptions are consistent with the protection of investors and the purposes intended by the policy and provisions of the 1940 Act for the same reasons. Investors would receive no benefit or additional protection if the Company were required repeatedly to seek Commission orders with respect to the same issues addressed in the application. Indeed, they might be disadvantaged as a result of the Company's increased expenses.

Applicants' Conditions

1. The Company will monitor the reasonableness of the 1.25% charge.

2. The registration statement for the Existing Contracts and any Future Contracts under which the 1.25% charge is deducted will include:

(a) disclosure of the charge;

(b) disclosure explaining the purpose of the charge; and

(c) a statement that the charge is reasonable in relation to the Company's increased tax burden as a result of Section 848 of the Code.

3. The Company also will include as an exhibit to the registration statement for the Existing Contracts and any Future Contracts under which the 1.25% charge is deducted an actuarial opinion as to:

(a) the reasonableness of the charge in relation to the Company's increased tax burden as a result of Section 848 of the Code;

(b) the reasonableness of the after tax rate of return used in calculating the charge; and

(c) the appropriateness of the factors taken into account by the Company in determining the after tax rate of return.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29383 Filed 12–1–95; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

1994–95 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994–95 Advisory Council on Social Security (the Council).

DATES: Thursday, December 14, 1995, 9 a.m. to 5 p.m.

ADDRESSES: Sheraton City Centre, 1143 New Hampshire Avenue, NW, Washington D.C., 20037, (202) 775–0800.

FOR FURTHER INFORMATION CONTACT: By mail—Nick Curabba, 1994–95 Advisory Council on Social Security, Suite 705, 1825 Connecticut Avenue, NW, Washington, DC 20009; By telephone—(202) 482–7119; By telefax—(202) 482–7123.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25, 1994 (59 FR 30367), July 29, (59 FR 35942), September 29–30 (59 FR 47146), October 21–22 (59 FR 51451), November 18–19 (59 FR 55272), January

27, 1995 (60 FR 3416), February 10–11 (60 FR 5433), March 8–9 (60 FR 10091), March 10–11 (60 FR 10090), April 21–22 (60 FR 18419), May 19–20 (60 FR 24961), June 2–3 (60 FR 27372) July 27–28 (60 FR 35097), August 31–September 1 (60 FR 41142), October 12–13 (60 FR 50234).

II. Agenda

The following topics will be presented and discussed:

* Previously developed plans that would revise the OASDI program along different lines;
* The preliminary findings and recommendations of the Advisory Council;
* Other issues before the Advisory Council.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance.)

Dated: November 29, 1995.

Daniel Wartonick,

Acting Executive Director, 1994–95 Advisory Council on Social Security.

[FR Doc. 95–29563 Filed 11–30–95; 1:16 pm]

BILLING CODE 4190–29–P

Privacy Act of 1974; Computer Matching Program (SSA/Internal Revenue Service (IRS))

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the above address.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
(2) Obtain the Data Integrity Boards' approval of the match agreements;
(3) Furnish detailed reports about matching programs to Congress and OMB;
(4) Notify applicants and beneficiaries that their records are subject to matching; and
(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: November 21, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Internal Revenue Service (IRS)

A. Participating Agencies

SSA and IRS.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions under which IRS agrees to the disclosure of tax return information relating to unearned income. SSA will use the match results to verify the eligibility for, and the correct amount of benefits payable to, individuals under the Supplemental Security Income (SSI) program, which provides payments under title XVI of the Social Security Act (the Act) to aged, blind and disabled recipients with income below levels established by law and regulations, and federally-administered supplementary payments under section 1616 of the Act including payments under section 212 of Pub.L. 93–66, 87 Stat. 152.

C. Authority for Conducting the Matching Program

Section 1631(e)(1)(b) of the Act and Section 6103(l)(7) of the Internal Revenue Code.

D. Categories of Records and Individuals Covered by the Match

IRS will provide SSA with an electronic or magnetic tape file extracted from the Wage and Information Returns Processing File. The extracted file will contain tax return information about unearned income. Each record on the IRS file will be matched to SSA's Supplemental Security Income Record, HHS/SSA/OSR 90–60–0103, to identify individuals potentially subject to benefit reductions or termination of payment eligibility under the statutory provisions listed above.

E. Inclusive Dates of the Match

The matching agreement for this program shall become effective no sooner than 40 days after a copy of the agreement, as approved by the Data Integrity Boards of both agencies, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement) or 30 days after publication of this notice in the Federal Register, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 95–29474 Filed 12–1–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending November 24, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–850
Date Filed: November 20, 1995
Parties: Members of the International Air Transport Association
Subject:
TC2 Reso/P–1827 dated November 10, 1995 r1–r6
TC2 Reso/P–1828 dated November 10, 1995 r7–r14
Expedited Within Africa Resolutions
Intended effective date: expedited December 31/January 1, 1996

Myrna F. Adams,
Acting Chief, Documentary Services Division.
[FR Doc. 95–29396 Filed 12–1–95; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 24, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–851
Date Filed: November 20, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 18, 1995
Description: Application of Alaska Airlines, Inc., pursuant to 49 U.S.C. 41101, and Subpart Q of the Regulations, requests a permanent certificate of public convenience and necessity authorizing Alaska to engage in the scheduled foreign air transportation of persons, property and mail between San Francisco, California, on the one hand, and Mazatlan and Puerto Vallarta, Mexico, on the other hand, and between Los Angeles, California, on the one hand, and Los Cabos, Mexico, on the other hand.

Docket Number: OST–95–855
Date Filed: November 21, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 19, 1995
Description: Application of Scandinavian Airlines System (SAS), pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for amendment of its foreign air carrier permit, last issued by the Department pursuant to Order 87–8–55 in Docket 44249 adopted on August 14, 1987, to engage in foreign air transportation of persons, property and mail between a point or points in Denmark, Norway and Sweden, via intermediate points, to a point or points in the United States, and beyond.

Docket Number: OST–95–856
Date Filed: November 21, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 19, 1995
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 605, authorizing foreign air transportation of persons, property, and mail between New York, New York and Manchester, England.

Docket Number: OST–95–861
Date Filed: November 22, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 20, 1995
Description: Application of Reno Air, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, requests a Certificate of Public Convenience and Necessity authorizing Reno Air to engage in foreign air transportation of persons, property and mail between any point in the United States and any point in Canada.

Docket Number: OST–95–862
Date Filed: November 22, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 20, 1995
Description: Application of United Parcel Service Co., pursuant to 49 U.S.C. Section 4110 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of cargo (property and mail) between Anchorage, Alaska, on the one hand, and Manila, The Philippines, on the other hand, via the intermediate points Seoul, Korea; Taipei, Taiwan; and to the beyond points Singapore; Kuala Lampur, Malaysia; Taipei, Taiwan and Seoul, Korea.

Docket Number: OST–95–866
Date Filed: November 22, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 20, 1995
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102 and 41108 and Subpart Q of the Regulations, applies for renewal of its Certificate of Public Convenience and Necessity for Route 606, as issued by Order 91–4–45 (served April 24, 1991), authorizing Delta to engage in foreign air transportation of persons, property and mail between the terminal points Atlanta, Georgia and Manchester, England. Delta's certificate for Route 606 expires on May 23, 1996. Delta requests renewal of its certificate for a period of five years.

Docket Number: OST–95–869
Date Filed: November 24, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 22, 1995
Description: Application of Continental Micronesia, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a five-year renewal of its Route 171 certificate authority to provide scheduled foreign air transportation of persons, property and mail between Guam and Tokyo, Japan.

Myrna F. Adams,
Acting Chief, Documentary Services Division.
[FR Doc. 95–29395 Filed 12–1–95; 8:45 am]
BILLING CODE 4910–62–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 232
Monday, December 4, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: November 28, 1995, 60 FR 58728.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 29, 1995, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added on the Agenda scheduled for November 29, 1995:

Item No., Docket No., and Company

CAG–24—RP95–452–000 and TM96–2–22–000, CNG Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 95–29521 Filed 11–30–95; 8:45 am]

BILLING CODE 6717–01–M

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD

DATE AND TIME:

December 14, 1995, 2:30 p.m. Closed Session

December 14, 1995, 2:45 p.m. Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, December 14, 1995

(Closed Session (2:30 p.m.–2:45 p.m.))

—Minutes, October 1995 Meeting
—Grants and Contracts

Thursday, December 14, 1995

(Open Session (2:45 p.m.–3:30 p.m.))

—Minutes, October 1995 Meeting
—Closed Session Agenda Items for February 1996 Meeting
—Chairman's Report
—Director's Report
—Program Approval
—Committee Reports
—Other Business
—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 95–29520 Filed 11–29–95; 4:39 pm]

BILLING CODE 7555–01–M

Federal Register

Monday
December 4, 1995

Part II

Department of the Interior

Office of the Secretary

43 CFR Part 10

Native American Graves Protection and Repatriation Act Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

RIN 1024–AC07

Native American Graves Protection and Repatriation Act Regulations

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes definitions and procedures for lineal descendants, Indian tribes, Native Hawaiian organizations, museums, and Federal agencies to carry out the Native American Graves Protection and Repatriation Act of 1990. These regulations develop a systematic process for determining the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

EFFECTIVE DATE: This final rule will take effect on January 3, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, Box 37127, Washington DC 20013–7127. Telephone: (202) 343–4101. Fax: (202) 523–1547.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, President George Bush signed into law the Native American Graves Protection and Repatriation Act, hereafter referred to as the Act. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. Section 13 of the Act requires the Secretary of the Interior to publish regulations to carry out provisions of the Act.

Preparation of the Rulemaking

The proposed rule (43 CFR Part 10) for carrying out the Act was published in the Federal Register on May 28, 1993 (58 FR 31122). Public comment was invited for a 60-day period, ending on July 27, 1993. Copies of the proposed rule were sent to the chairs or chief executive officers of all Indian tribes, Alaska Native villages and corporations, Native Hawaiian organizations, national Indian organizations and advocacy groups, national scientific and museum organizations, and State and Federal agency Historic Preservation Officers and chief archeologists.

Eighty-two written comments were received representing 89 specific organizations and individuals. These included thirteen Indian tribes, ten Native American organizations, nine museums, seven universities, three national scientific and museum organizations, eleven state agencies, nineteen Federal agencies, nine other organizations, and eight individuals. Several letters represent more than one organization. Comments addressed nearly all sections and appendices of the proposed rule. All comments were fully considered when revising the proposed rule for publication as a final rulemaking.

Given the volume of comments, it is impractical to respond in detail in the preamble to every question raised or suggestion offered. Some commenters pointed out errors in spelling, syntax, and minor technical matters. Those errors were corrected and are not mentioned further in the preamble. In addition, many commenters made similar suggestions or criticisms, or repeated the same suggestion for different sections of the proposed rule. In the interest of reducing the length of the text, comments that are similar in nature are grouped and discussed in the most relevant section in the preamble. Some comments pointed out vague and unclear language. Clarifying and explanatory language was added to the rule and preamble.

Changes in Response to Public Comment

Section 10.1

This section outlines the purpose and applicability of the regulations. Three commenters recommended including specific reference to the applicability of the rule to provisions of the United States Code regarding illegal trafficking. Section 4 of the Act, which deals with illegal trafficking in ''Native American Human Remains and Cultural Items,'' is incorporated directly into Chapter 53 of title 18, United States Code, and does not require implementing regulations. For that reason, a section regarding section 4 of the Act has not been included in these regulations.

One commenter recommended including language to guarantee ''that these collections will remain intact and always be available to qualified researchers...'' Another commenter recommended amending the regulations to preclude the removal of prehistoric skeletal and cultural materials from the nation's museums. The drafters consider the proposed changes contrary to the intent of the Act as reflected in statutory language and legislative history.

One commenter recommended additional language addressing Federal trust responsibilities and tribal sovereignty. These regulations are consistent with the United States' trust responsibilities to Indian tribes.

Three commenters recommended amending the rule to apply to territories of the United States. The rule of statutory construction stipulates that Federal law applies to United States territories only when specifically indicated. No such reference is indicated in either the statute or its legislative history. It is inappropriate to use regulations to extend applicability to areas not defined in the Act.

Section 10.2

This section defines terms used throughout the regulations. One commenter recommended listing the definitions alphabetically instead of thematically under the present categories of ''participants,'' ''human remains and cultural items,'' ''cultural affiliation,'' ''location,'' and ''procedures.'' A thematic organization has been retained. However, the subsections have been retitled and reorganized. The new subsections are (a) who must comply with these regulations?; (b) who has standing to make a claim under these regulations?; (c) who is responsible for carrying out these regulations?; (d) what objects are covered by these regulations?; (e) what is cultural affiliation?; (f) what types of lands do the excavation and discovery provisions of these regulations apply to?; and (g) what procedures are required by these regulations?

Subsection 10.2 (a) includes definitions of those persons or organizations who must comply with these regulations.

One commenter asked for clarification as to whether all Federal agencies as defined in § 10.2 (a)(4) (renumbered as § 10.2 (a)(1)) must comply with provisions of the Act. All Federal agencies, except the Smithsonian Institution, are responsible for completing summaries and inventories of collections in their control and with ensuring compliance regarding inadvertent discoveries and intentional excavations conducted as part of activities on Federal or tribal lands. Three commenters and the Review Committee authorized under section 8 of the Act requested clarification of the exclusion of the Smithsonian Institution as a Federal agency. Sections 2 (4) and 2 (8) of the Act specifically exclude the

Smithsonian Institution from having to comply with the provisions of the Act. The legislative history of the Act is silent as to the reason for this exclusion. The exclusion is likely to have been based on prior passage of the National Museum of the American Indian Act in 1989 that included provisions requiring the repatriation of human remains from all of the Smithsonian Institution's constituent museums.

Seven commenters requested clarification of the definition of Federal agency official in § 10.2 (a)(5) (renumbered as § 10.2 (a)(2)). One commenter recommended changing the term to Federal land manager. The definition included in the proposed rule applies to both individuals with authority for the management of Federal lands and individuals with responsibility for the management of Federal collections that may contain human remains, funerary objects, sacred objects, or objects of cultural patrimony. Since responsibility for the latter task may fall to Federal agency officials who do not manage land, the recommended change has not been made. Four commenters recommended changes in the definition of Federal agency official to reflect that a Federal agency may have more than one delegated authority. The definition was rewritten to reflect this concern. One commenter recommended stipulation of a specific date by which each agency must delegate individuals to perform the duties relating to these regulations. Such a deadline is unnecessary as all Federal agencies have already named their contacts. A listing of Federal agency officials for each agency is available from the Departmental Consulting Archeologist.

Seven commenters requested clarification of the definition of museum in § 10.2 (a)(6) (renumbered § 10.2 (a)(3)). One commenter recommended replacing the term ''human remains or cultural items'' with ''Native American artifacts'' to reflect the expanded reporting of ''collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony'' in the summaries required in § 10.8. The specific focus of the Act and the rule remains limited to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony, and not the broader category of Native American artifacts.

One commenter recommended providing a definition of the term ''possession of, or control over'' in the first sentence of the definition. One commenter recommended requiring museums take responsibility for all human remains, funerary objects, sacred objects, or objects of cultural patrimony in their possession that were originally excavated intentionally or discovered inadvertently by Federal agencies on non-Federal lands. All museums or Federal agencies with Native American collections should consider carefully whether they have possession or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in § 10.2 (a)(3)(i) and (a)(3)(ii).

Eleven commenters recommended changes to the definitions of possession in § 10.2 (e)(5) (renumbered § 10.2 (a)(3)(i)) and control in § 10.2 (e)(6) (renumbered § 10.2 (a)(3)(ii)). One commenter recommended giving both terms their ordinary and customary meaning in the regulations. Two commenters objected to use of ''legal interest'' in both definitions on the grounds that under common law, museums and Federal agencies do not have sufficient legal interest in human remains to do anything with them. Two commenters questioned including items on loan to a museum in a summary or inventory since the items are not the property of the museum. One commenter recommended deleting the definition of control as it would require Federal bureaucrats and museum officials to make complicated legal determinations. Examples designed to clarify the uses of possession and control have been added to these sections to address the concerns reflected in these comments. Two commenters questioned whether ''control'' applied to museum collections or to Federal lands. The term applies to human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently on Federal or tribal lands. One commenter recommended that the definition specifically address Federal agency responsibilities for collections from Federal lands being held by non-governmental repositories. Federal agencies are responsible for the appropriate treatment and care of such collections.

One commenter requested clarification of the exclusion of procurement contracts from ''Federal funds'' in § 10.2 (a)(6) (renumbered § 10.2 (a)(3)(iii)). Procurement contracts are not considered a form of Federal-based aid but are provided to a contractor in exchange for a specific service or product. One commenter requested deletion of the last two sentences of the definition that clarify the applicability of the rule to museums that are part of a larger entity that receives Federal funds, questioning if the legislative history supports such an interpretation. One commenter supported the present definition of institutions receiving Federal funds. Application of Federal laws to institutions that receive Federal funds is common, being used with such recent legislation as the Americans with Disabilities Act. These laws typically are interpreted to apply to organizations that are part of larger entities that receive Federal funds. Two commenters recommended specifying the applicability of the rule to museums affiliated with certified local governments and Indian tribal museums. The rule applies to museums that are part of certified local governments. A tribal museum is covered by the Act if the Indian tribe of which it is part receives Federal funds through any grant, loan, or contract (other than a procurement contract).

Subsection 10.2(b) includes definitions of those persons or organizations that have standing to make a claim under these regulations.

Eight commenters recommended changes in the definition of lineal descendant in § 10.2 (a)(14) (renumbered § 10.2 (b)(1)). Two commenters identified the definition as too restrictive. The drafters realize that claims of lineal descent require a high standard but feel that this standard is consistent with the preference for repatriation to lineal descendants required by the Act. Another commenter presented a statistical argument to indicate that all members of Indian tribes might be recognized as lineal descendants of human remains over 1,000 year old. Regardless of the statistical possibilities that someone might be related to another, the definition of lineal descent requires that the human remains, funerary objects, or sacred objects under consideration be from a known individual. It is highly unlikely that the identity of an individual that lived 1,000 years ago is known, or that it is possible to trace descent directly and without interruption from that known individual to a living individual. One commenter recommended replacing the ''known Native American individual'' from which lineal descent is traced with ''known individual of a tribe.'' The term Indian tribe as used in these regulations refers only to those contemporary tribes, bands, nations, or other organized Indian groups or communities that are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Requiring the known individual to have been a member of the

same Federally recognized Indian tribe as their lineal descendant would limit repatriation to only the most recent human remains, funerary objects, or sacred objects and is not supported by the statutory language or legislative history. One commenter recommended deleting reference to use of the ''traditional kinship system.'' Reference to traditional kinship systems is designed to accommodate the different systems that individual Indian tribes use to reckon kinship. One commenter recommended that the definition should also allow more conventional means of reckoning kinship. The definition has been amended to include the common law system of descendance as well as the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization. One commenter recommended defining an additional class of ''lineage members'' or ''kindred''—individuals that are not lineal descendants in the biological sense of the term but are related by the traditional kinship system—and then giving these individuals a secondary priority for making a claim after lineal descendants but before culturally affiliated Indian tribes. Determinations of priority between blood descendants and descendants by some other traditional kinship system are more properly resolved in specific situations rather than through general regulations.

One commenter recommended clarifying the definition of Indian tribe in § 10.2 (a)(9) (renumbered § 10.2 (b)(2)) to ensure timely notification. Seventeen commenters recommended expanding the definition to include a broader spectrum of Indian groups than those recognized by the Bureau of Indian Affairs (BIA). Several commenters identified specific groups they felt should have standing, including: various bands or tribes in California, Washington, and Ohio; Native American organizations such as the American Indian Movement; Native American groups that ''would be eligible for recognition by the BIA if they so chose to be''; and ''bands recognized by other Federal agencies.'' Section 12 of the Act makes it clear that Congress based the Act upon the unique relationship between the United States government and Indian tribes. That section goes on to state that the Act should not be construed to establish a precedent with respect to any other individual or organization. The statutory definition of Indian tribe, which specifies that such tribes must be ''recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,'' precludes extending applicability of the Act to Indian tribes that have been terminated, that are current applicants for recognition, or have only State or local jurisdiction legal status.

As was explained in the preamble of the proposed regulations, the definition of Indian tribe used in the Act was drawn explicitly from an earlier version of the bill (H.R. 5237, 101th Congress, 2nd Sess. sec. 2 (7), (July 10, 1990)) using a specific statutory reference. The final language of the Act is verbatim from the American Indian Self Determination and Education Act (25 U.S.C. 450b). The earlier statute has been carried out since 1976 by the BIA to apply to a specific list of eligible Indian tribes which has been published in the Federal Register.

Four commenters found this interpretation unduly narrow and recommended interpreting the statutory definition to apply to Indian tribes that are recognized as eligible for benefits for the special programs and services provided by ''any'' agency of the United States to Indians because of their status as Indians. The Review Committee concurred with this recommendation. Based on the above recommendations, the definition of Indian tribe included in the regulations was amended by deleting all text describing the process for obtaining recognition from the BIA. In place of this text, the final regulations include a statement identifying the Secretary as responsible for creating and distributing a list of Indian tribes for the purpose of carrying out the Act. This list is currently available from the Departmental Consulting Archeologist and will be updated periodically.

One commenter recommended deleting the reference to Alaska Native corporations in the definition of Indian tribe. The American Indian Self Determination and Education Act, the source for the definition of Indian tribe in the Act, explicitly applies to Alaska Native corporations and, as such, supports their inclusion under the Act. Alaska Native corporations are generally considered to have standing under these regulations if they are recognized as eligible for a self-determination contract under 25 U.S.C. 450b.

Two commenters recommended deleting the final line of the definition of Indian tribe in which Native Hawaiian organizations are subsumed for purposes of the regulations. The Review Committee concurred with this recommendation. The final sentence has been deleted and the applicability of the regulations to Native Hawaiian organizations has been specified where appropriate throughout the text. The term Indian tribe official defined in § 10.2 (b)(4) has not been changed, though the drafters wish to stress the term's applicability to the representatives of both Indian tribes and Native Hawaiian organizations.

Two commenters recommended changes to the definition of Native Hawaiian organization in § 10.2 (a)(11) (renumbered § 10.2 (b)(3)). One commenter recommended specifying that such organizations should have a primary and stated purpose of the ''preservation of Hawaiian history,'' and have expertise in Native Hawaiian ''cultural'' affairs. Two commenters recommended requiring a Native Hawaiian organization verify that more than 50% of its membership is Native Hawaiian. The statutory definition of Native Hawaiian organization in section 2 (11) of the Act precludes expansion of the criteria for identifying Native Hawaiian organizations. An earlier version of the bill (S. 1980, 101st Cong. 2nd sess. section 3 (6)(c), (September 10, 1990)) that eventually became the Act included a provision requiring Native Hawaiian organization to have ''a membership of which a majority are Native Hawaiian.'' This provision was not included in the Act. The legislative history confirms that Congress considered the additional criterion and decided not to include it in the Act.

One commenter recommended rewriting the definition of Native Hawaiian in § 10.2 (a)(10) (renumbered § 10.2 (b)(3)) to include Pacific Islanders. The statutory definition of Native Hawaiian in section 2 (10) of the Act precludes expansion of this definition to include Pacific Islanders who are not descendants of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Three commenters recommended changes to the definition of Indian tribe official in § 10.2 (a)(12) (renumbered § 10.2 (b)(4)). One commenter recommended specifying that Indian tribe official means the tribal chair or officially designated individual. One commenter recommended allowing designation by the governing body of an Indian tribe ''or as otherwise provided by tribal code, policy, or procedure.'' One commenter recommended that the designated person need not be a member of that Indian tribe. The definition of Indian tribe official was amended to identify the principal leader or the individual officially designated or otherwise provided by tribal code, policy or established procedure. This person need not necessarily be a member of the particular Indian tribe.

Subsection 10.2 (c) includes definitions of those persons or organizations that are responsible for carrying out these regulations.

One commenter requested clarification of the role of the Departmental Consulting Archeologist defined in Section 10.2 (a)(3) (renumbered § 10.2 (c)(3)). The Departmental Consulting Archeologist was delegated by the Secretary of the Interior with responsibilities for drafting regulations, providing staff support to the Review Committee, administering grants, and providing technical aid under the Act.

Subsection 10.2 (d) includes definitions of the objects covered by these regulations.

One commenter recommended that the definition of Native American in § 10.2 (a)(8) (renumbered § 10.2 (d)) specifically include Native Hawaiians. The definition already includes Native Hawaiians. To clarify the applicability of the rule, the definition of Native American was rewritten to specifically include tribes, people, or cultures indigenous to the United States, ''including Alaska and Hawaii.'' The drafters point out that ''Native American'' is used in the Act and in these rules only to refer to particular human remains, funerary objects, sacred objects, or objects of cultural patrimony and not to any living individual or group of individuals.

Thirteen commenters recommended changes to the definition of human remains in § 10.2 (b)(1) (renumbered § 10.2 (d)(1)). One commenter recommended expanding the definition to include all human remains, not just those of Native Americans. The Act is designed specifically to address the disposition or repatriation of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony and not to cover all human remains. Three commenters recommended excluding disarticulated and unassociated human remains, such as isolated teeth and finger bones, from repatriation. Two commenters recommended amending the definition to include only those human remains ''associated with the body at the time of death,'' to eliminate such things as extracted or lost teeth, cut finger nails, coprolites, blood residues, and tissue samples taken by coroners. One commenter recommending deleting the exemplary clause—''including but not limited to bones, teeth, hair, ashes, or mummified or otherwise soft tissue''—as being overly limiting. The Act makes no distinction between fully-articulated burials and isolated bones and teeth. Additional text has been added excluding ''naturally shed'' human remains from consideration under the Act. This exclusion does not include any human remains for which there is evidence of purposeful disposal or deposition. The exemplary clause has been deleted. One commenter requested clarification as to whether the regulations would apply to blood sold or given to a blood bank by an individual of Native American ancestry. The blood bank would not be subject to repatriation having been freely given. One commenter supported considering human remains that had been incorporated into a sacred object or object of cultural patrimony be considered as part of that cultural item for the purpose of determining cultural affiliation. Two commenters recommended excluding human remains incorporated into cultural items from repatriation since, as one said, they were ''objectified by their original makers and owners, not the institutions that might house them now.'' One commenter requested clarification regarding the status of human remains that were not freely given but that have been incorporated into objects that are not cultural items as defined in these regulations. The legislative history is silent on this issue. Determination of the proper disposition of such human remains must necessarily be made on a case-by-case basis. One commenter recommended deleting reference to human remains that have been incorporated into a funerary object, sacred object, or object of cultural patrimony, in that any change in the character of the human remains, including the definition, would only further their dishonor. Three commenters asked for clarification in how to determine whether human remains incorporated into a funerary object, sacred object, or object of cultural patrimony were freely given. The provision regarding determination of the cultural affiliation of human remains that had been incorporated into a funerary object, sacred object, or object of cultural patrimony was recommended by the Review Committee to preclude the destruction of items that might be culturally affiliated with one Indian tribe that incorporate human remains culturally affiliated with another Indian tribe.

Two commenters recommended changing the definition of cultural items in § 10.2 (b)(2). One commenter recommended broadening the definition to include any and all objects deemed to have cultural significance by an Indian tribe. Cultural items are defined in the Act to include human remains, funerary objects, sacred objects, and objects of cultural patrimony. The term was redefined in the proposed regulations to include funerary objects, sacred objects, and objects of cultural patrimony, and not human remains to address the objections some individuals had expressed over referring to human remains as ''cultural items.'' Two commenters recommended retaining the statutory definition. The term has been changed to read ''human remains, funerary object, sacred object, or object of cultural patrimony'' throughout the rule to ensure clarity. The definition of ''cultural item'' has been deleted throughout the text.

One commenter recommended combining the definitions of associated funerary object in § 10.2 (b)(3) and unassociated funerary object in § 10.2 (b)(4) into a single definition of funerary object. The two definitions have been combined in § 10.2 (d)(2).

Ten commenters recommended changes to the definition of associated funerary object in § 10.2 (b)(3) and unassociated funerary object in § 10.2 (b)(4) (combined and renumbered § 10.2 (d)(2)). One commenter recommended rewriting both definitions to make a distinction between objects associated with individual human remains and objects for which a funerary context is suspected, but association with individual human remains is not possible. Another commenter objected to what he considered an overly rigorous standard of proof. The statutory language makes it clear that only those objects that are associated with individual human remains are considered funerary objects. The distinction between associated and unassociated funerary objects is based on whether the individual human remains are in the possession or control of a museum or Federal agency. One commenter recommended deleting the word ''intentionally'' in § 10.2 (b)(3)(i) and § 10.2 (b)(4) since the term does not occur in the statutory language. The term is included to emphasize the intentional nature of death rites or ceremonies. Items that inadvertently came into proximity or contact with human remains are not considered funerary objects. One commenter questioned whether any objects excavated intentionally or discovered inadvertently on Federal or tribal land after November 16, 1990, would fit these definitions, since it requires the objects be in the possession or control of a Federal agency, and section 3 of the Act seems to preclude Federal ownership of such objects. Possession of funerary objects excavated intentionally or discovered inadvertently on Federal or

tribal land is sufficient to apply the provisions of the statute to such intentional excavations or inadvertent discoveries.

Two commenters recommended deletion of the clause ''or near'' from § 10.2 (b)(3) (renumbered § 10.2 (d)(2)), indicating that it would require museums to enter into debates about the proximity of objects to human remains. The clause was included to accommodate variations in Native American death rites or ceremonies. Some Indian tribes, particularly those from the northern plains, have ceremonies in which objects are placed near, but not with, the human remains at the time of death or later. The drafters consider these funerary objects.

One commenter recommended clarifying § 10.2 (b)(3)(i) (renumbered § 10.2 (d)(2)(i)) by specifying that funerary objects are ''associated'' even when another institution has possession or control of the human remains. The drafters consider the statutory definition, which is repeated in the rule, to support this interpretation without any additional modification. One commenter recommended clarifying § 10.2 (a)(3)(ii) [renumbered § 10.2 (d)(2)(i)] by specifying that items made exclusively for burial purposes are considered as associated funerary objects even if there are no associated human remains. Items made exclusively for burial purposes are considered associated funerary objects even if there are no associated human remains. Four commenters recommended deleting the final sentence of the definition of unassociated funerary object in § 10.2 (b)(4) [renumbered § 10.2 (d)(2)], objecting to the requirement that such human remains were removed from a ''specific'' burial site. Another commenter recommended deleting reference to the ''preponderance of the evidence'' in the same sentence, because it implies an adversarial context which is inappropriate for the process of identifying unassociated funerary objects. In both of these instances, the text of the regulations reflects exactly the statutory text and has not been modified. The final sentence of this section was drawn from an explanation of the definition in House Report 101–877 (1990: page 2) and is taken to represent Congressional intent. Another commenter recommended deleting ''reasonably believed to have been'' from § 10.2 (b)(2)(ii). The phrase has been deleted.

One commentor recommended clarifying the definition of unassociated funerary objects in § 10.2 (b)(4) to exempt items exhibited intentionally with individual human remains but subsequently returned or distributed to living descendants or other individuals. The recommended language has been added to § 10.2 (d)(2)(ii).

Ten commenters recommended changes to the definition of sacred objects in § 10.2 (b)(5) (renumbered § 10.2 (d)(3)). One commenter recommended broadening the definition to include any and all objects deemed to have sacred significance by Indian tribes and not just those objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Another commenter recommended broadening the definition to include specific objects or geological features identified by traditional Native American practitioners as endowed with sacredness due to the object's past role in traditional Native American religious ceremony or on the basis of similar objects having contemporaneous religious significance or function in the continued observance or renewal or a ceremony. The statutory language and legislative history indicate that this definition was written carefully and precisely. Expanding the definition to include the types of items identified above in the comments runs counter to Congressional intent.

Four commenters recommended changes in the definition of traditional religious leader in § 10.2 (a)(13) (renumbered § 10.2 (d)(3)). Two commenters recommended replacing the phrase allowing such leaders to be recognized ''by members of that Indian tribe'' with ''that Indian tribe.'' The drafters realize that allowing members of an Indian tribe or Native Hawaiian organization to recognize traditional religious leaders may result in conflicting claims. However, such issues are best resolved by the members of the Indian tribe or Native Hawaiian organization themselves. One commenter recommended replacing the word ''or'' at the end of § 10.2(a)(13)(i) with ''and.'' The two criteria listed are intended as alternative methods for identifying traditional religious leaders and not as cumulative criteria. Another commenter recommended specifying that an individual's leadership role must be based on ''traditional'' religious practices. The drafters consider whether or not an individual's leadership in a religion is based upon traditional practice an inappropriate concern for Federal regulations.

Two commenters recommended deleting the word ''current'' from the first line of the definition of sacred object since the term was not included in the statutory text. The term was deleted. One commenter objected to ''use'' being the measure to decide whether an object should be repatriated, suggesting instead right of possession as the relevant standard. The necessity of an object for use by present day adherents of a traditional Native American religion is critical in identifying a sacred object, while determination of right of possession is necessary to determine whether the sacred object must be repatriated to the Indian tribe or Native Hawaiian organization or may be retained by the museum or Federal agency.

One commenter recommended deleting the second sentence of the definition of sacred object which he considers to depart in major ways from the statutory definition. The second sentence of the definition was drawn from the Senate Select Committee Report (S.R. 101–473: p. 7) and helps clarify the precise, limited use of this category intended by Congress.

One commenter recommended including clarification in the definition that: 1) sacred objects can not be associated with human remains, as they would then be funerary objects, and 2) only in rare circumstances can prehistoric items be sacred objects. While this usually may be so, blanket exclusion of any funerary object from also being a sacred object is not considered appropriate in that the categories are not mutually exclusive. Similarly, identification of sacred objects from prehistoric contexts must be made on a case-by-case basis.

One commenter agreed with the inclusion of sacred objects that have religious significance or function in the continued observance or renewal of a traditional Native American religious ceremony or ritual. Another commenter recommended deleting reference to ''renewal'' in the second sentence, stating that the issue was debated during the legislative process and final statutory language does not include reference to renewal of a traditional Native American religious ceremony. Language specifying the inclusion of objects that function in the continued observance or renewal of a traditional Native American religious ceremony as sacred objects was drawn from the Senate Select Committee Report (S.R. 101–473: p. 7) and is thought to reflect Congressional intent.

Three commenters requested clarification as to who is responsible for making the determination that a particular item fits the definition of sacred object. In all cases, the museum or Federal agency official has the initial responsibility for deciding whether an object in its possession or control fits

the definition of sacred object. However, if an Indian tribe or Native Hawaiian organization does not agree with this decision, it has recourse to challenge directly the decision of the museum or Federal agency. The Indian tribe or Native Hawaiian organization may seek the involvement of the Review Committee if it is unsuccessful in its direct appeal to the museum or Federal agency.

Six commenters recommended changes to the definition of objects of cultural patrimony in § 10.2 (b)(6) (renumbered § 10.2 (d)(4)]) One commenter recommended deleting the word ''cultural'' from the term ''cultural items'' in the first sentence, in that the current phrasing is circular. The word has been deleted. One commenter cautioned that the definition does not recognize that internal disagreements may occur within an Indian tribe or Native Hawaiian organization about the importance of an object of cultural patrimony. Another commenter recommended broadening the definition to include those objects of ongoing historical, traditional, or cultural importance central to any sub-group of an Indian tribe, such as a band, clan, lineage, ceremonial society, or other subdivisions. Claims for human remains, funerary objects, sacred objects, or objects of cultural patrimony by such sub-groups must be made through an Indian tribe or Native Hawaiian organization.

One commenter requested clarification of the example of the Zuni War Gods that appear to be both objects of cultural patrimony and sacred objects. An object can fit both categories depending upon the nature of the traditional religion and the system of property rights used by a particular Indian tribe or Native Hawaiian organization. Zuni War Gods present such a case. In other cases, sacred objects may have been owned privately and, thus, are not considered objects of cultural patrimony. One commenter requested clarification as to who is responsible for making the determination that a particular item fits the definition of object of cultural patrimony. In all cases, the museum or Federal agency official has the initial responsibility for deciding whether an object in its possession or control fits the definition of object of cultural patrimony. However, if an Indian tribe or Native Hawaiian organization does not agree with this decision, it has recourse to challenge directly the decision with the museum or Federal agency.

Section 10.2 (e) includes the definition of cultural affiliation. One commenter recommended deleting reference to Native Hawaiian organizations as they are included under the definition of Indian tribe in § 10.2 (b)(2). The text has been changed to read ''Indian tribe or Native Hawaiian organization'' throughout the regulations. One commenter requested inclusion of a short characterization of the threshold criteria applicable to determining cultural affiliation. A second sentence clarifying this threshold has been added to the definition. Three commenters requested additional clarification of the definition of cultural affiliation. Procedures for determining cultural affiliation are included in § 10.14 (c).

Section 10.2 (f) includes definitions of the types of lands that the excavation and discovery provisions of these regulations apply.

Six commenters asked for clarification regarding the applicability of statutory provisions for intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony to private lands. Unlike provisions of the National Historic Preservation Act (NHPA) that are applicable to Federal undertakings regardless of who owns the land on which the project is being conducted, the intentional excavation and inadvertent discovery provisions of these regulations apply only to Federal and tribal lands.

Five commenters recommended changes to the definition of Federal lands in § 10.2 (d)(1) (renumbered § 10.2 (f)(1)). One commenter recommended deleting the definition of ''control'' as it will require Federal bureaucrats to make complicated legal determinations as to what is ''a sufficient legal interest to permit it to apply these regulations without abrogating the rights of a person.'' Another commenter recognized the need for a definition of Federal ''control,'' but suggested that the present definition fails to clarify the issue. Another commenter requested clarification whether Federal control, and thus the intentional excavation and inadvertent discovery provisions of these regulations, extends to the Wetlands Reserve Program or to the Forest Legacy Program. One commenter requested clarification of the applicability of Federal control to real property instruments such as easements, rights-of-way, and rights-of-entry for performance of specific activities. One commenter requested clarification of the applicability of Federal control to private lands through issuance of a Federal permit, license, or funding. One commenter recommended including the existence of a long term lease by a Federal agency or an interest under which the land owner has authorized the United States to undertake intentional excavation or other land disturbance as under Federal control. As indicated above, the intentional excavation and inadvertent discovery provisions of the Act apply only to Federal and tribal lands. Whether Federal control of programs such as those mentioned above is sufficient to apply these regulations to the lands covered by the program depends on the circumstances of the Federal agency authority and on the nature of state and local jurisdiction. Such determinations must necessarily be made on a case-by-case basis. Generally, however, a Federal agency will only have sufficient legal interest to ''control'' lands it does not own when it has some other form of property interest in the land such as a lease or easement. The fact that a Federal permit is required to undertake and activity on non-Federal land generally is not sufficient legal interest in and of itself to ''control'' the land within the meaning of these regulations and the Act. In situations when two or more Federal agencies share regulatory or management jurisdiction over Federal land, the Federal agency with primary management authority will generally have control for purposes of implementing the Act.

Nineteen commenters recommended changes to the definition of tribal lands in § 10.2 (c)(2) (renumbered § 10.2 (f)(2)). One commenter recommended broadening the exclusion of privately owned lands within the exterior boundaries of an Indian reservation to encompass state and Federal land holdings. Thirteen commenters objected to the exclusion of privately owned lands within the exterior boundaries of an Indian reservation and recommended returning to the statutory language. The proposed exclusion was intended to rectify a contradiction between the statutory definition of tribal lands in section 2 (15) of the Act and the guarantee in section 2 (13) of the Act that no taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution is intended. The drafters concur with the majority of commenters that the blanket exclusion of private lands within the exterior boundaries of an Indian reservation from the intentional excavation and inadvertent discovery provisions of the regulations is overly broad. The exclusion was deleted and a new subsection added at § 10.2 (f)(2)(iv) stating that the regulations will not apply to tribal lands to the extent that any particular action

authorized or required will result in a taking of property without just compensation within the meaning of the Fifth Amendment to the United States Constitution.

Three commenters recommended broadening the definition of tribal lands to apply to allotments held in trust for Indian tribes or individuals, regardless of whether the allotments are inside or outside the boundaries of an Indian reservation. This suggestion is inconsistent with the Act's definition of tribal lands. One commenter stated that the reference to 18 U.S.C. 1151 in § 10.2 (d)(2)(ii) (renumbered § 10.2 (f)(2)(ii)) does not clarify the nature of dependent Indian community. Dependent Indian communities, as defined in 18 U.S.C. 1151 (b), include those Indian communities under Federal protection that were neither ''reserved'' formally, nor designated specifically as a reservation. Cohen, in *The Field of Indian Law* (1982:38) concludes that ''it is apparent that Indian reservations and dependent Indian communities are not two distinct definitions of place but rather definitions which largely overlap. All Indian reservations are also dependent Indian communities unless they are uninhabited.'' In addition to Indian reservations, dependent Indian communities also include patented parcels of land and rights-of-way within residential Indian communities under Federal protection. One commenter recommend joining § 10.2 (d)(2)(i), (ii), and (iii) (renumbered § 10.2 (f)(2)(i), (ii), and (iii)) with ''or'' at the end of the first two lines. This change has been made.

Nine commenters recommended changes to the definition of aboriginal lands in § 10.2 (c)(3). Four commenters challenged use of Indian Claims Commission judgements to determine aboriginal territories. One commenter recommended using Native American origin stories and anthropological evidence instead. A second commenter recommended that the limits of aboriginal territory must come directly from the Indian tribe itself. A third commenter recommended expanding the definition to include all ceded lands and all lands traditionally used by an Indian tribe, regardless of whether there may have been overlapping usage by neighboring Indian tribes. The Indian Claims Commission was established in 1949 specifically to adjudicate tribal land claims against the United States. Over 200 cases were settled between 1949 and 1978 when the Commission was terminated. Since 1978, Indian land claims have been adjudicated by the United States Court of Claims. The Commission and the Court have considered a wide range of information, including oral history and anthropological evidence, in reaching their decisions. Section 3 (a)(1)(C) of the Act specifically gives Indian tribes the right to claim human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal land that is recognized by a final judgement of the Indian Claims Commission or United States Court of Claims as part of their aboriginal land. The drafters consider the final judgements of the Indian Claims Commission a valuable tool for identifying area occupied aboriginally by a present-day Indian tribe. Other sources of information regarding aboriginal occupation should also be consulted. The definition has been deleted from the rule.

One commenter questioned whether provisions of the Act regarding intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony apply to all aboriginal lands, or just to that portion of an Indian tribe's aboriginal territory that is now in Federal ownership or control. These regulations apply to claims for human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. One commenter requested reference information for final judgements by the Court of Claims. One commenter stated that the map of aboriginal lands included with the final report of the Indian Claims Commission is out of print, out of date, and difficult to use as neither counties nor detailed geographic indicators are provided. The United States Geological Survey has recently republished the 1978 map. Efforts are underway to update the map to include land claims settled since 1978. One commenter inquired about the status of Indian tribes that have filed a land claim for a particular area, but for which a court judgement or ruling from the court has been made. An Indian tribe's status to make a claim under the Act based upon aboriginal occupation of an area is recognized when a favorable court judgement or ruling has been made. However, this situation will only affect the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal land where no lineal descendants or culturally affiliated Indian tribe has made a claim.

Subsection 10.2 (g) includes definitions of procedures required to carry out these regulations. Two commenters asked for clarification of the difference between the items included on the summary in § 10.2 (e)(1) (renumbered § 10.2 (g)(1)) and the items on the inventory in § 10.2 (e)(2) (renumbered § 10.2 (g)(2)). Summaries are written general descriptions of collections or portions of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony. Inventories are item-by-item descriptions of human remains and associated funerary objects. The distinction between the documents reflects not only their subject matter, but also their detail (brief overview vs. item-by-item list), and place within the process. Summaries represent an initial exchange of information prior to consultation while inventories are documents completed in consultation with Indian tribe officials and representing a decision by the museum official or Federal agency official about the cultural affiliation of human remains and associated funerary objects.

One commenter recommended including a definition of ''repatriation'' in the regulations. The rules of statutory construction require interpreting undefined terms according to their common meaning. Repatriation means the return of someone or something to its nation of origin.

One commenter recommended inclusion of a definition for ''appropriate care and treatment'' of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The appropriateness of particular types of care and treatment will necessarily depend on the nature of the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony under consideration and the concerns of any lineal descendants or affiliated Indian tribes or Native Hawaiian organizations.

Three commenters recommended changes to the definition of intentional excavation in 10.2 (e)(3) (renumbered § 10.2 (g)(3)). One commenter recommended deleting the word ''planned'' from the definition to embrace all kinds of archeological removal, whether planned or occasioned by an encounter with human remains, funerary objects, sacred objects, or objects of cultural patrimony during construction or land use. One commenter recommended expanding the definition to include intentional excavations on private lands. One commenter recommended replacing the definition with ''means intentional removal for the purposes of discovery, study, or removal of such items'' from section 3 (c) of the statute. These

changes are unnecessary or inappropriate and were not made.

Two commenters recommended changes to the definition of inadvertent discovery in 10.2 (e)(4) (renumbered § 10.2 (g)(4)). One commenter recommended replacing ''inadvertent'' with ''accidental, unintended, unpredictable, or unexpected in spite of all precaution,'' to avoid any presumption that such discoveries were made without forethought or through negligence. Another commenter recommended expanding the definition to include inadvertent discoveries on private lands. These changes are unnecessary or not appropriate and were not made.

Section 10.3

This section carries out section 3 (c) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally from Federal or tribal lands after November 16, 1990. One commenter recommended stating explicitly that the section applies only to Native American human remains and not to non-Native American human remains such as mountain men or early settler burials. The language has not been changed as all provisions of these regulations apply only to Native American human remains, funerary objects, sacred objects or objects of cultural patrimony. One commenter requested reviewing use of the term ''intentional excavation'' throughout the section to ensure consistency with the statutory language. Section 3 (c) of the Act applies to the ''intentional removal from or excavation of Native American [human remains and] cultural items from Federal or tribal lands for the purposes of discovery, study, or removal.'' This definition includes scientific archeological excavations for independent research, public interpretation, or as part of planned removal of human remains during land-disturbing activities such as construction projects.

One commenter recommended the regulations focus on ''more protection of archeological sites ... for research by the scientific community.'' The Act certainly has as one goal improved protection of *in situ* archeological sites. However, this protection is afforded not simply to allow for more scientific study. Rather, the intent is to preserve and protect Native American graves, allowing for their scientific examination only as necessary and appropriate.

Two commenters requested clarification of the clause ''if otherwise required'' regarding the necessity for obtaining a permit issued pursuant to the Archeological Resources Protection Act (ARPA) in § 10.3 (b)(1). The clause has been deleted. The Review Committee recommended additional clarification in § 10.3 (b)(1) regarding issuance of ARPA permits on private holdings within the exterior boundaries of Indian reservations and on lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act. Language regarding issuance of permits on these lands has been included.

One commenter recommended requiring the consent of culturally affiliated Indian tribes and Native Hawaiian organizations for intentional excavations on both Federal and tribal lands. Another commenter recommended requiring the consent of traditional religious leaders for intentional excavations on both Federal and tribal lands. These changes have not been made. Section 3 (c)(2) of the Act authorizes excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony only after consultation with or, in the case of tribal lands, consent of the appropriate Indian tribe or Native Hawaiian organization. One commenter recommended that § 10.3 (b)(4) not be ''the only requisite for intentional excavation.'' The requirements of § 10.3 (b)(1) through (4) must all be met before conducting an intentional excavation.

One commenter recommended changing the title of § 10.3 (c) from ''Procedures'' to ''Disturbances during authorized land use.'' The procedures outlined in this subsection apply to intentional removal or excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or tribal land and not disturbance during authorized land use, which is dealt with under § 10.4 regarding inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands. One commenter suggested that § 10.3 (c)(1) confuses the issue of who — ''any person'' or the Federal official — is responsible for complying with the provisions of the regulations regarding intentional excavations, and recommended deleting the section. Two commenters requested clarification of an ''activity'' as referred to in the first sentence of § 10.3 (c)(1). The subsection has been deleted and subsequent subsections renumbered.

One commenter requested clearly defining ''responsible Federal agency.'' The Federal agency with the responsibility for issuing approvals or permits on actions within their designated Federal lands is the responsible Federal agency under the Act. In situations when two or more Federal agencies share regulatory or management jurisdiction of Federal land, the Federal agency with primary management authority will have control for purposes of carrying out these regulations unless otherwise agreed.

One commenter recommended requiring any person who proposes to undertake an activity on Federal or tribal lands that may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony to notify all affected parties, including culturally affiliated Indian tribes and Native Hawaiian organizations. The Federal agency official — and not a person proposing to undertake an activity on Federal lands — is responsible for the management of lands under his or her control and is the appropriate person to notify Indian tribes and Native Hawaiian organizations of intentional excavations. The Federal agency official, once notified by a person of such an activity, is required to take reasonable steps to determine whether the planned activity may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Prior to issuing any approvals or permits, the Federal agency official must notify in writing the Indian tribe or Native Hawaiian organizations that are likely to be affiliated with any excavated items. A person proposing to undertake an activity on tribal lands should contact the appropriate tribal official directly.

One commenter recommended requiring the Federal official identified in the first sentence of § 10.3 (c)(2) (renumbered § 10.3 (c)(1)) to meet the Secretary's standards for persons conducting ethnohistoric research. There currently are no Secretary's standards for ethnohistoric research. Each agency is responsible for ensuring that their employees are qualified to conduct the work required of them. One commenter recommended clarifying the ''reasonable steps'' required of Federal officials to explicitly include completion of Stage I surveys for of all planned ground-disturbing activities as required under section 106 of the NHPA. The type of steps taken by a Federal agency official are expected of vary from case-to-case and have not been specified in these regulations.

One commenter recommended requiring Federal officials to take reasonable steps regarding planned activities ''or Federal actions.'' The recommended language has not been

added as it might be interpreted to refer to Federal actions on non-Federal lands. Provisions of the Act regarding intentional excavations and inadvertent discoveries apply only to activities occurring on Federal and tribal lands.

One commenter questioned whether the responsible Federal agency official need be notified regarding planned activities for which there is no indication that disturbance of human remains, funerary objects, sacred objects, or objects of cultural patrimony is likely. These regulations do not require notification of the responsible Federal agency official regarding planned activities for which intentional excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony is not anticipated. Human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently during such an activity would require cessation of activity for thirty (30) days while the Federal official consults with affiliated Indian tribes and Native Hawaiian organizations.

One commenter questioned whether the phrase ''otherwise required by law'' in the second sentence of § 10.3 (c)(2) (renumbered § 10.3 (c)(1)) referred to ''approvals or permits'' or to ''activities.'' The sentence has been rewritten as ''required approvals or permits for activities.'' One commenter recommended including language requiring Federal agency officials to notify both Indian tribe officials and traditional religious leaders and obtaining that written approval from the traditional leaders prior to issuance of required approvals or permits. The Act requires Federal agency officials to consult with Indian tribes and Native Hawaiian organizations regarding the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands. Consultation with traditional religious leaders is required regarding the identification of cultural items in museum or Federal agency collections. The consent of traditional religious leaders prior to the issuance of approvals or permits is not required by the Act. One commenter recommended inclusion of provisions requiring a minimum of at least ten days advance warning of any proposed meeting in the Federal agency official's notification to culturally affiliated Indian tribes or Native Hawaiian organizations. The recommended requirement could needlessly delay consultation between Federal and tribal officials. Federal officials should include adequate advance notice of upcoming meetings, but the necessary time will vary according to the situation and existing relationship between the Federal agency and the Indian tribes or Native Hawaiian organizations. The text has not been changed.

One commenter questioned the necessity of distinguishing in the third sentence of § 10.3 (c)(2) (renumbered § 10.3 (c)(1)) between culturally affiliated Indian tribes and those Indian tribes that aboriginally occupied an area. The priority order for evaluating claims of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands, provided in Section 3 of Act, includes Indian tribes that are recognized as aboriginally occupying the area in which the objects were identified. The regulatory language ensures that those Indian tribes that aboriginally occupied an area are notified of planned activities that may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Another commenter recommended including state-recognized intertribal councils in the notification process. Section 12 of the Act makes clear the special relationship between the Federal government and Indian tribes. Federal officials are thus directed to consult directly with Indian tribes. Indian tribes may however, delegate their consultation responsibilities to other organizations, including state inter-tribal councils. One commenter recommended following written notification by telephone contact if there is no response in 15 days. Language to that effect has been inserted as the second to last line of the section. One commenter recommended that, after consultation, Federal officials are required to complete a written plan of action as described in § 10.5 (e) and to execute the actions called for in the plan of action. The recommended text has been inserted as § 10.3 (c)(2) and all subsequent subsections renumbered.

Two commenters objected to § 10.3 (c)(3) on the grounds that by exhorting Federal agencies to coordinate activities required by these regulations with the compliance procedures for section 106 of the NHPA, the regulations give the impression that human remains, funerary objects, sacred objects, or objects of cultural patrimony would be eligible for the National Register of Historic Places. Four other commenters recommended the subsection either be left as is, or edited to require such coordination to ensure consistency between and among Federal agencies. One commenter recommended excluding such ''secondary agencies as the State Historic Preservation Officers'' from the consultation process. The subsection is intended to remind Federal agencies of similarities between the two consultation processes while providing the necessary latitude for designing effective and situation-specific procedures. The text has not been changed.

Two commenters objected to identification in § 10.3 (c)(4) of the Indian tribe as being responsible for compliance with provisions of the Act regarding intentional excavations on their lands. Section 3 (a)(2)(A) of the Act makes it clear that Indian tribes have preference regarding custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on their tribal lands second only to lineal descendants. The regulatory text is consistent with Federal recognition of an Indian tribe's sovereignty regarding administration of their lands and has not been changed. Another commenter requested clarification of whether the intentional excavation provisions apply to lands exchanged by Indian tribes. In general, the provisions regarding intentional excavations and inadvertent discoveries apply to Federal lands and those lands currently held in trust by the United States for an Indian tribe. Lands outside the exterior boundary of an Indian reservation that are held in trust by the United States for an Indian tribe do not meet the statutory definition of tribal lands. These lands are under Federal control, and the provisions for intentional excavation and inadvertent discovery on Federal lands apply. The provisions of these regulations do not apply to lands owned by an Indian tribe that have not been accepted into trust by the United States. Another commenter requested clarification regarding which Federal agency would have primary responsibility for compliance with the intentional excavation and inadvertent discovery provisions of these regulations for proposed or existing coal mining operations on tribal lands. Any person who proposes to undertake an activity on tribal lands that may result in the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must immediately notify in writing the responsible Indian tribe official. The tribal official then decides what, if any, steps to take. One commenter recommended including a deadline for Indian tribe response to notification of

an activity planned for tribal lands. A deadline for Indian tribal response regarding proposed intentional excavations on tribal land is not considered appropriate as section 3 (c)(2) of the Act makes it clear that any intentional excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony on tribal land requires the consent of the appropriate Indian tribe or Native Hawaiian organization. Another commenter recommended clarifying that the Indian tribe should take appropriate steps to make certain that the ''treatment and disposition'' of human remains, funerary objects, sacred objects, or objects of cultural patrimony be carried out. The recommended language has been included.

Section 10.4

This section carries out section 3 (d) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are discovered inadvertently on Federal or tribal lands after November 16, 1990. One commenter requested replacement of the word ''inadvertent'' in the section title with ''unintended.'' Section 3 (d) of the Act addresses the inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony as part of approved work projects as well as other, unintentional discoveries on Federal or tribal lands. The statutory term covers both meanings adequately and has been retained in the title and throughout the text.

One commenter felt the entire section needed to be more specific. One commenter recommended editing the general statement in § 10.4 (a) to state explicitly that the provisions apply only to ''Native American'' human remains, funerary objects, sacred objects, or objects of cultural patrimony. The definition of human remains, funerary objects, sacred objects, or objects of cultural patrimony in § 10.2 (d) make it clear that these regulations only apply to Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

One commenter requested clarification in the regulations regarding treatment of disarticulated and unassociated human remains. Section 10.4 of the Act covers the treatment and disposition of such human remains under ''Inadvertent Discoveries.''

Two commenters recommended revising the first sentence of § 10.4 (b) to require the person making an inadvertent discovery, and not just anyone that knows of an inadvertent discovery, to notify the responsible Federal official. The phrase has been revised to more closely reflect the statutory language. Another commenter recommended that the notification of the responsible Federal official be immediate, via telephone or fax, to ensure that the activity is ceased as soon as possible. The text has been modified to require immediate telephone notification of the inadvertent discovery with written confirmation following. One commenter recommended inclusion of language in this subsection restating that determination of lineal descent or cultural affiliation usually require physical anthropological study, laboratory analysis, radiocarbon dating, and other study to make a legally defendable statement. The criteria for determining lineal descent and cultural affiliation, which may include these kinds of examinations, are contained in § 10.14, and apply throughout these regulations; they have not been repeated in this section. Another commenter recommended requiring professional investigation sufficient to complete an accurate identification of the nature of the inadvertent discovery prior to notifying the responsible Federal agency official or Indian tribe official to ensure that the procedures are not carried out unnecessarily. The drafters consider requiring the complete professional identification of inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony prior to notification of the responsible Federal or Indian tribe officials inconsistent with the statutory language and the legislative history. One commenter requested clarification of the responsibilities of the person making an inadvertent discovery for notifying other agencies, such as the local police, coroner, and the State Historic Preservation Officer. Requirements for notification of local or state officials vary by jurisdiction and have not been addressed in this rule. Subsection 10.4 (f) of these regulations suggests Federal land managers coordinate their responsibilities under this section with their emergency discovery responsibilities under section 106 of the NHPA which includes notification of the State Historic Preservation Officer. One commenter recommended modifying the text to require Federal agency employees working on tribal lands to immediately notify their supervisor, who in turn will notify the Indian tribe official. Section 3 (d)(1) of the Act requires notification of Indian tribe officials regarding inadvertent discoveries on tribal lands. Federal agency officials conducting activities on tribal lands should ensure that their employees are familiar with the notification procedures of these regulations. One commenter recommended expanding this subsection to include provisions to ensure that a Federal agency documents and acts on reported inadvertent discoveries. Federal agency officials are required to comply with the provisions of these regulations.

One commenter recommended applying the cessation of activity following inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands in § 10.4 (c) only to burials in areas that will not be disturbed and in emergency discovery situations. This suggestion runs counter to the statutory requirements and the regulatory language has not been changed. Two commenters requested clarification of the phrases ''in the area of the discovery'' and a ''reasonable effort'' regarding protection of human remains, funerary objects, sacred objects, or objects of cultural patrimony following inadvertent discovery. The terms have not been precisely defined in recognition of the variability of site locations and types. In general, the terms are interpreted in a fashion that adequately protects the human remains, funerary objects, sacred objects, or objects of cultural patrimony from additional damage.

One commenter recommended editing and renumbering § 10.4 (a), (e), and (f) to more accurately reflect the distinctions between procedures on Federal lands and those for tribal lands. The text of § 10.4 (d) has been renumbered § 10.4 (d)(1) and § 10.4 (e) has been renumbered as § 10.4 (d)(2).

Two commenters recommended including additional text in § 10.4 (d)(1) (renumbered section 10.4 (d)(1)(i)) directing Federal agencies to establish a process for certifying the receipt of inadvertent discovery notifications and training personnel responsible for such certifications by a specific date. Certification procedures for the receipt of notifications — such as those resulting from inadvertent discoveries — are already in place with all land management Federal agencies and need only be modified to the specifics of these regulations. One commenter recommended including additional examples of steps to secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony — such as fencing, 24–hour surveillance in populated areas — in § 10.4 (d)(2) (renumbered section 10.4 (d)(1)(i)). Specific steps to secure and protect inadvertently discovered human

remains, funerary objects, sacred objects, or objects of cultural patrimony will vary from site-to-site and have not been specified in this rule.

Seven commenters recommended extending the one (1) day deadline for notification of affiliated Indian tribes by Federal agency officials in § 10.4 (d)(3), with suggestions ranging anywhere from three to ten days. The one (1) day deadline was designed to ensure that Federal agency officials and Indian tribe officials maximize the amount of time available for consultation regarding the treatment and disposition of inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. The Act requires that the thirty (30)-day cessation of the activity begins with the Federal agency official certifying receipt of notification from the inadvertent discoverer of the human remains, funerary objects, sacred objects, or objects of cultural patrimony. As a result, any additional time provided the Federal agency official to contact the appropriate Indian tribe official is time taken away from the consultation process. In recognition of the inherent notification difficulties, the drafters have modified the initial notification requirements to require the person making the inadvertent discovery to provide immediate telephone notification with written confirmation to the Federal official. Certification of the notification by the Federal official and the required notification of the Indian tribe official occurs upon receipt of the written confirmation, thus providing the Federal agency official with some additional time between the telephone call and receipt of the written notice to identify the appropriate Indian tribe officials. The one (1) day notification deadline has been extended to three (3) working days. One commenter requested clarification for the phrase ''Indian tribe or tribes known or likely to be affiliated.'' It should be noted that this initial contact is designed to notify those Indian tribes or Native Hawaiian organizations that are ''likely'' to be affiliated with the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. Federal agencies are encouraged to compile a listing of the appropriate Indian tribes or Native Hawaiian organizations and their officials as soon as possible to facilitate rapid notification when an inadvertent discovery is made. Determination of the specific affiliation of the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony can be made during the thirty (30) day cessation of activity. Two commenters requested clarification of the phrase ''if known'' in § 10.4 (d)(3) (renumbered § 10.4 (d)(1)(iii)) regarding the required notification of Indian tribes which aboriginally occupied the area in which human remains, funerary objects, sacred objects, or objects of cultural patrimony have been discovered inadvertently. Information regarding the aboriginal lands of Indian tribes is readily available to Federal agency officials from the results of Indian Land Claims Commission and Court of Claims decisions. ''If known'' has been deleted.

One commenter recommended suspending the initiation of consultation required in § 10.4 (d)(4) (renumbered § 10.4(d)(1)(ii)) for up to thirty (30) days in cases of illegal excavation or violation of Federal law, specifically in cases where confidential criminal investigation are being conducted. As the likely custodians of illegally excavated human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to section 3 of the Act, the appropriate Indian tribe or Native Hawaiian organization should be notified of the inadvertently discovery and consulted as part of any ongoing investigation. The responsibility to pursue ARPA investigations does not devolve from the land manager's law enforcement agency merely because consultation is required under this Act. If an ARPA investigation is under way, the law enforcement agents involved should immediately notify their superiors and other Federal agency officials involved in NAGPRA consultation if any aspect of NAGPRA consultation is likely to interfere with the investigation.

Six commenters recommended changing the length of the required cessation of activities in § 10.4 (e) (renumbered § 10.4 (d)(2)). Four commenters recommended reducing the period — to fifteen (15) days, seven (7) days, or deleted entirely — while two commenters recommended extending the period until the affiliated Indian tribe or Native Hawaiian organization consents to continuation of the project. The thirty (30) day period for cessation of activities in the area of an inadvertent discovery is stipulated in section 5 (d) of the Act and has not been changed. Three commenters requested clarification of the stipulation that activity may resume after thirty (30) days, ''if the resumption of the activity is otherwise lawful.'' The phrase is used to acknowledge that provisions of other statutes, such as section 106 of the NHPA, may also apply to a particular inadvertent discovery and the resumption of activities in the area of the inadvertent discovery must comply with other legal requirements as well as those of these regulations.

Four commenters requested clarification of the procedures following the thirty (30)-day cessation of activity. After consulting with the affiliated Indian tribe or Native Hawaiian organization during the thirty day (30) cessation of activity, the Federal agency official must make a decision regarding the treatment, excavation, and disposition of any inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. The options may include preservation *in situ* or excavation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony. This decision must be informed by the consultation process, but obviously will take into account other considerations as well. One commenter requested clarification regarding the responsibility for costs incurred during the required work cessation. Responsibility for costs incurred during the required work cessation will depend upon the nature of the contract drawn between the Federal agency and the appropriate contractor. One commenter recommended additional language indicating that resumption of an activity in the area of inadvertent discovery can occur only after the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been removed or treated. Determining the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently on Federal and tribe land can only occur after consultation with affiliated Indian tribes and Native Hawaiian organizations. The drafters consider it premature to stipulate the outcomes.

One commenter recommended accompanying the written, binding agreement between the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations in the second sentence of § 10.4 (e) (renumbered 10.4 (d)(2)) by a letter from the appropriate Indian tribe official expressing agreement with a proposed course of action. The nature of agreements between Federal agencies and Indian tribes and Native Hawaiian organizations will depend upon the specific situation and have not been defined precisely in these regulations. Four commenters recommended clarifying the phrase ''necessary parties.'' The phrase has been replaced with ''Federal agency and the affiliated Indian tribes or Native Hawaiian

organizations.'' One commenter inquired whether a memorandum of agreement signed and executed under the NHPA prior to any inadvertent discovery would take priority standing. Such an agreement might apply if the agreement specifies the plan for the removal, treatment, and disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony; the agreement is considered binding by both the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations; and, the agreement is consistent with the requirements of the Act and these regulations.

One commenter identified § 10.4 (f) (renumbered section 10.4 (e)) as an ''absurd attempt to fob off the Federal agency's responsibilities onto the tribes.'' Requiring a Federal agency to act as intermediary between the person inadvertently discovering human remains, funerary objects, sacred objects, or objects of cultural patrimony and the Indian tribe on whose land the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been discovered inadvertently is counter to the goal of the statute, as expressed in the legislative history, of facilitating direct dialogue. One commenter recommended inclusion in this subsection of a listing of those actions required of Indian tribe officials under the Act. The subsection has been amended to include the recommended text. One commenter recommended inclusion of a specified deadline for an Indian tribe to respond following notification of the inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The drafters consider it inappropriate to impose a deadline for Indian tribe response following notification. One commenter recommended inclusion of a section regarding the resumption of activity on tribal lands. The recommended section has been included as § 10.4 (e)(2).

One commenter identified § 10.4 (g) (renumbered § 10.4 (f)) as serving only to confuse requirements and procedures stemming from distinct laws with distinct purposes and recommended deleting the subsection. Other commenters identified § 10.4 (g) as being most welcome, but recommended omitting the specific regulatory citations in light of current efforts to amend regulations for the NHPA. The citations have been retained to facilitate cross-referencing. One commenter recommended clarifying the subsection to indicate that the inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony does not necessarily require an agreement under section 106 of the NHPA. Not all human remains, funerary objects, sacred objects, or objects of cultural patrimony are deemed eligible for the National Register of Historic Places and thus do not fall within the purview of the NHPA. Their inadvertent discovery would thus not require such an agreement. Two commenters recommended including specific language to outline the relationship between provisions of the Act and those of ARPA, NHPA, and the American Indian Religious Freedom Act (AIRFA). The details of how Federal agencies coordinate their responsibilities under the various statutes will depend on their procedures and specific situations; the text has not been modified. However, section 110 (a)(2)(E)(iii) of the NHPA requires Federal agencies to provide for the disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in a manner consistent with the Act. Further, section 112 (b)(3) and (b)(4) require the Secretary of the Interior to publish guidelines to encourage private owners as well as Federal, state, and tribal governments to protect Native American human remains, funerary objects, sacred objects, and object of cultural patrimony.

One commenter recommended including language at § 10.4 (g) requiring all authorizations to carry out land use activities on Federal lands or tribal lands, including all leases and permits, to include a requirement for the holder of the authorization to notify the appropriate Federal or tribal official immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The language is included in the text.

Section 10.5

This section establishes requirements for consultation as part of the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands. One commenter objected to the implication in the first sentence of the section that consultation is necessarily ''part of'' the intentional excavation or inadvertent discovery process. The Act requires consultation as part of intentional excavation and inadvertent discovery situations. The language has been retained. One commenter recommended replacing the phrase ''Federal lands'' with ''land in the United States, its territories, or possessions.'' Provisions of section 3 of the Act are clearly limited to Federal and tribal lands. The language has been retained. One commenter recommended that ''a minimum set of standards be identified for the scientific study of human remains and associated grave goods.'' Section 5 (a)(2) of the Act precludes using the Act as an authorization for the initiation of new scientific studies of human remains and associated funerary objects. The recommended language has not been included.

Two commenters recommended revising the first sentence of § 10.5 (a) to coordinate contact with traditional religious leaders through the appropriate Indian tribe. The most appropriate method for contacting traditional religious leaders will vary between Indian tribes. The language has been retained to provide this necessary flexibility. Another commenter recommended clarifying that consultation must be conducted without regard to state boundaries. The widespread relocation of Indian tribes during the eighteenth and nineteenth centuries means that consultation may often require contact with Indian tribes that are no long resident in the area of the intentional excavation or inadvertent discovery. Lineal descendants and affiliated Indian tribes and Native Hawaiian organizations must be contacted and consulted with regardless of where they are living presently.

One commenter recommended inserting ''the'' before ''human remains'' in § 10.5 (a)(1) to make it clear that the consulting parties may vary from case-to-case. The text has been changed. One commenter recommended changing the ''and'' between § 10.5 (a)(1) and (a)(2) to ''or.'' The original text has been retained to emphasize the necessity of consulting with Indian tribes that are or are likely to be culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony as well as the Indian tribe on whose aboriginal lands the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been located or are expected to be found and the Indian tribe or Native Hawaiian organization have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony. One commenter recommended deleting § 10.5 (a)(2) in that it assumes a relationship between prehistoric archeological sites and historic use of an area. Section 3 of the Act makes it clear that Indian tribes on whose aboriginal lands human remains, funerary objects, sacred objects, or objects of cultural

patrimony have been or are likely to be located need not be culturally affiliated with those human remains, funerary objects, sacred objects, or objects of cultural patrimony to be considered their legitimate custodian. One commenter recommended substituting ''excavation'' for ''activity'' in § 10.5 (a)(2). The term ''activity'' in this sentence refers to ''an activity on Federal or tribal lands that may result in the excavation of human remains or cultural items'' as defined in § 10.3 (c). The text has been modified to incorporate this clarification.

One commenter recommended deleting ''likely'' cultural affiliation in the first sentence of § 10.5 (b) since the term is not defined in either the Act or these regulations. The term has been deleted. One commenter recommended replacing the term ''objects'' in the same sentence with ''human remains, funerary objects, sacred objects, or objects of cultural patrimony.'' The term has been replaced. One commenter recommended deleting the phrase ''other Indian tribes that may have a relationship...'' in the second sentence. The existing phrase is drawn from section 3 (a)(2)(C)(2) of the Act and has been retained. One commenter recommended provisions that require the notice include information regarding the proposed time and place for meetings and the Federal agency's proposed treatment and disposition of the intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony. The suggested language has been included in the text. One commenter recommended revising the last sentence of § 10.5 (b) to require traditional religious leaders be consulted and their recommendations followed. The requested revision runs counter to the requirements of the Act and has not been included in the text.

Two commenters requested further clarification of the type of activities that constitute consultation. Additional text has been added throughout § 10.5 to clarify the consultation process.

One commenter recommended inclusion of additional language in § 10.5 (c) requiring Federal agencies to provide in writing information regarding the nature and general location of any inadvertent discovery or proposed activity. The recommended text has been added. One commenter recommended rewriting § 10.5 (c)(2) to indicate that additional documentation will be supplied if it has been used to identify the cultural affiliation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The proposed language has been included in the text.

One commenter recommended amending § 10.5 (d) to indicate that failure to respond to the Federal agency's request for information could be taken to signify an Indian tribe's voluntary withdrawal from standing under these sections. Indian tribes or Native Hawaiian organizations that have been duly notified of an intentional excavation or inadvertent discovery are not required to respond to the Federal agency's request for information. One commenter recommended including language to insure that information provided to Federal agency officials will, at the request of the Indian tribe or Native Hawaiian organization, be held in confidence. The Act provides no specific exemptions from provisions for the Freedom of Information Act for culturally sensitive information. However, Federal agency officials may, at the request of an Indian tribe or Native Hawaiian organization official, take such steps as are considered necessary pursuant to otherwise applicable law to ensure that information of a particularly sensitive nature is not made available to the general public. One commenter recommended changing ''collections'' in § 10.5 (d)(3) to ''human remains, funerary objects, sacred objects, or objects of cultural patrimony.'' The recommended change has been made. Two commenters identified § 10.5 (d)(5) as being too broad and unlikely to give useful guidance and recommended deleting the subsection. Although not determinant, information about the kinds of cultural items that the Indian tribe or Native Hawaiian organization considers as funerary objects, sacred objects, or objects of cultural patrimony is important and useful for Federal agency officials to make decisions required of them under these regulations. The subsection has been retained.

One commenter recommended tying the requirements in § 10.5 (e) explicitly to the coordinated preparation of individual environmental and cultural resource management plans for projects, facilities, and land units. Integration of the requirements of these regulations with those of other statutes and policies has been left to the discretion of each affected Federal agency. One commenter considered § 10.5 (e) fine as it stands. One commenter recommended requiring the completion of a written plan of action as a result of consultation. The text has been rewritten to make it clear that completion of a written plan of action, approved and signed by the Federal agency official, is required. One commenter recommended requiring the approval and signature of the written plan of action by the affiliated Indian tribe officials. While the approval and signature of Indian tribe officials and other parties is desirable, the concurrence of these officials to the written plan of action is not required. One commenter recommended the written plan of action include *in situ* preservation to offset what the commenter perceived as a bias toward ''excavation, analysis and recordation of imbedded materials,'' and too narrow a definition of custodial interest in imbedded materials. One commenter requested clarification of the term ''treatment'' as used in § 10.5 (e)(3) and (e)(7). The term is used throughout these regulations according to its common meaning, that is, a specific manner of dealing with human remains, funerary objects, sacred objects, or objects of cultural patrimony. The specifics of treatment must be considered as part of the consultation process. Two commenters recommended including *in situ* preservation specifically as a treatment option in § 10.5 (e)(3). Preservation of human remains, funerary objects, sacred objects, or objects of cultural patrimony in place should be considered whenever possible. Because case-by-case examples have not been provided, the option has not been added to the regulatory text. Three commenters recommended including language under § 10.5 (e)(4) to indicate that archeological recording must comply with certain standards. Any archeological activity conducted on Federal or tribal lands, including the intentional excavation or removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony, must meet the standards provided by ARPA. One commenter recommended requiring radiocarbon dating as part of the archeological reporting. Determining the necessity of radiocarbon or other types of analysis must be on a case-by-case basis. One commenter recommended deleting § 10.5 (e)(5) since analysis should only be permitted in the rare circumstance where the cultural affiliation of human remains, funerary objects, sacred objects, or objects of cultural patrimony is not clear. The subsection has been retained to ensure that analysis is discussed thoroughly during the consultation process. One commenter recommended specifying the steps to be followed to contact traditional religious leaders should under § 10.5 (e)(6). The Act does not require consultation between Federal agency officials and traditional religious leaders regarding the

intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Identification of traditional religious leaders and the recommended steps in contacting them is left to the discretion of Indian tribe officials. Three commenters recommended specification of a deadline for completion of the written plan of action. Written plans of action should generally be completed during the thirty (30) day consultation period following an inadvertent discovery or prior to issuance of an ARPA permit for intentional excavations.

Three commenters recommended changing the title of § 10.5 (f) from ''Programmatic agreements'' to ''Comprehensive agreements'' to avoid confusion between agreements developed regarding the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands and programmatic agreements developed pursuant to provisions of the NHPA. The term ''programmatic agreements'' has been changed in the title and throughout the subsection to ''comprehensive agreements.'' Two commenters identified such agreements as ''an awkward means of accomplishing the intent of the law,'' and recommended deleting the subsection. Comprehensive agreements are intended to provide Federal agency officials and Indian tribe officials with an efficient means of ensuring intentionally excavated and inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony receive the appropriate treatment and disposition. The subsection has been retained. One commenter objected to the reference to ''specific'' human remains, funerary objects, sacred objects, or objects of cultural patrimony referenced in the first section of § 10.5 (f) on the grounds that such agreements should define proactively the procedures and criteria for the treatment and disposition of any human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently. The term has been deleted from the text. One commenter recommended that comprehensive agreements address not only Federal agency land management activities, but Federal agency regulatory responsibilities as well. These regulations address Federal agency responsibilities under the Act. While Federal agency responsibilities under other statutory, regulatory, and policy mandates need to be considered in preparation of such documents, the inclusion of such requirements in these rules is not appropriate. One commenter recommended including language requiring the consent of traditional religious leaders to any comprehensive agreements in the text. The Act does not require consultation between Federal agency officials and traditional religious leaders regarding the treatment or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. One commenter recommended modifying the last sentence of the subsection to indicate that the ''signed'' comprehensive agreement should be considered proof of consultation. The text has been edited as recommended.

One commenter recommended requiring Indian tribe officials to consult with and make recommendations following the advice of traditional religious leaders. The Act does not require consultation between Indian tribe officials and traditional religious leaders regarding the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Consultation with traditional religious leaders is left to the discretion of Indian tribe officials.

Section 10.6

This section carries out section 3 (a) of the Act, subject to the limitations in § 10.15, regarding custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands after November 16, 1990. One commentor objected to the terms ''legal interest in'' and ''ownership'' as applied to human remains, funerary objects, and objects of cultural patrimony; and recommended replacing the terms with ''custodial responsibility.'' The terms have been changed to ''custody'' throughout the text. This change, however, is only editorial and does not alter the requirements of the Act. One commenter recommended deleting reference to the limitations in § 10.15 from this section. Limitations on the custodial criteria presented in section 3 (a) of the Act are drawn from section 7 (b), (c), and (e) of the Act. Both § 10.15 and the cross-reference in this section have been retained. One commenter recommended setting limits in this section on just how temporally and culturally far afield claims of custody can be extended reasonably. Applicability of the custody criteria in this section is dependant on the facts of each case and will vary. The type of limits recommended by the commenter are considered inappropriate to such a case-by-case evaluation process. One commenter recommended including language in this section to identify the party responsible for substantiating claims. Lineal descendants or Indian tribes or Native Hawaiian organizations must provide information to substantiate their claims as outlined in § 10.10 (a) and (b).

One commenter recommended concluding the search for the custodian of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands with the first legitimate claimant identified under § 10.6 (a) that declines to make and substantiate a claim. One commenter recommended limiting custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony found on tribal lands to those human remains, funerary objects, sacred objects, or objects of cultural patrimony dating after establishment of the reservation. Two commenters recommended reversing the order of the custody criteria in § 10.6 (a)(2)(i) and (a)(2)(ii) so that culturally affiliated Indian tribes or Native Hawaiian organizations are given preference over tribal land owners. Another commenter recommended giving culturally affiliated Indian tribes preference over tribal land owners in claims for sacred objects or objects of cultural patrimony found on tribal lands. One commenter recommended deleting the custody criteria in § 10.6 (a)(2)(ii) and (a)(2)(iii) and instead have human remains, funerary objects, sacred objects, or objects of cultural patrimony found on Federal lands revert to the United States. One commenter recommended including language under § 10.6 (a)(2)(iii)(A) that would restrict any Indian tribe making a claim based upon its aboriginal occupation of Federal land from any action that would irreparably damage the interests of another Indian tribe who might have a superior claim. The custody criteria in § 10.6 (a) are taken virtually verbatim from section 3 (a) of the Act. All of the above recommendations run counter to those ownership criteria established by the Act and have not been included in the text.

Three commenters requested clarification in § 10.6 (b) of how the custody criteria effect Federal responsibilities under NHPA and ARPA. To the extent that any conflicts among those laws may exist, it is a general rule

of statutory construction that newer and more specific legislation takes precedence over older or more general laws. The custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands is as specified in § 10.6 (a).

One commenter stated that the obvious purpose of § 10.6 (c) is to create disputes between Indian tribes or between Native Hawaiian organizations regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, and recommended deleting the subsection. One commenter recommended inclusion of language in this subsection indicating that an identified individual, Indian tribe, or Native Hawaiian organization custodian has decision-making authority regarding the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. Individual, Indian tribe, or Native Hawaiian custodians of human remains, funerary objects, sacred objects, or objects of cultural patrimony gain complete decision-making authority regarding the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony upon the transfer of those human remains, funerary objects, sacred objects, or objects of cultural patrimony from the Federal agency. One commenter recommended deleting the word ''traditional'' from the second sentence of § 10.6 (c). Another commenter recommended adding the phrase ''of the specific Indian tribe in each instance'' at the end of the same sentence for clarification. The recommended language has been added to the text. Two commenters requested clarification of the purpose and nature of the public notices required in the third sentence of § 10.6 (c). Three commenters recommended the publication of notices regarding the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands in the tribal or local newspapers of those Indian tribes that have standing to make a claim under § 10.6 (a), as well as in a newspaper of general circulation in the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently. Another commenter recommended requiring publication of the notices within seven (7) days of determination of which Indian tribe or Native Hawaiian organization has custodial rights. Another commenter objected to the public notice requirement in that it might offend the sensibilities of those Indian tribes or Native Hawaiian organizations involved. This subsection outlines procedures to ensure due process in the transfer of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands to their proper individual, Indian tribe, or Native Hawaiian organization custodian. Notices need only provide information adequate to allow potentially interested lineal descendants, Indian tribes, or Native Hawaiian organizations to determine their interest in claiming custody under these regulations. The requirements regarding publication of public notices have been rewritten for clarity and include provisions for publication in local and tribal newspapers of general circulation in the areas in which culturally affiliated Indian tribes or Native Hawaiian organizations now reside.

Section 10.7

This section has been reserved for procedures for the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands or tribal lands after November 16, 1990. One commenter recommended developing this section with input from Indian tribes and Native Hawaiian organizations. Section 3 (b) of the Act requires that regulations regarding the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribe lands be published by the Secretary in consultation with the Review Committee, and representatives of Indian tribes, Native Hawaiian organizations, museums and the scientific community.

Section 10.8

This section carries out Section 6 of the Act related to conducting summaries of collections in the possession or control of museums that receive Federal funding or Federal agencies which may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony. Four commenters objected to use of the phrase ''collections that may include...'' in § 10.8 (a) and throughout the section as overstepping the statutory authorization and giving the mistaken impression that these regulations apply to entire collections and not to specific unassociated funerary objects, sacred objects, and objects of cultural patrimony. The statutory language is unclear whether summaries should include only those unassociated funerary objects, sacred objects, or objects of culturally affiliated with a particular Indian tribe or Native Hawaiian organization, or the entire collection which may include these cultural items. The legislative history and statutory language does make it clear that the summary is intended as an initial step in bringing an Indian tribe and Native Hawaiian organization into consultation with a museum or Federal agency. Consultation between a museum or Federal agency and an Indian tribe or Native Hawaiian organization is not required until after completion of the summary. Identification of specific sacred objects or objects of cultural patrimony must be done in consultation with Indian tribe representatives and traditional religious leaders since few, if any, museums or Federal agencies have the necessary personnel to make such identifications. Further, identification of specific unassociated funerary objects, sacred objects, and objects of cultural patrimony would require a museum or Federal agency to complete an item-by-item listing first. The drafters opted for the more general approach to completing summaries of collections that may include unassociated funerary objects, sacred objects, or objects of cultural patrimony rather than the itemized list required for the inventories in hopes of enhancing the dialogue between museums, Federal agencies, Indian tribes, and Native Hawaiian organizations required under the Act. One commenter requested clarification of the deadlines and funding responsibility of this section. Section 10.8 (c) of these regulations clearly states that summaries under this section are to be sent to affiliated or likely affiliated tribes by November 16, 1993. Funding responsibilities lie with the museums and Federal agencies maintaining such collections. Grants to aid museums, Indian tribes, and Native Hawaiian organizations in carrying out the Act are authorized in section 10 of the Act.

Three commenters questioned use of the term ''undertakings'' in the last

sentence of § 10.8 (a). One commenter (67–3) recommended defining the term as used in section 106 of NHPA. Two commenters recommended changing the term to ''activities'' or ''actions'' to make it clear that provisions of the Act do not necessarily apply to Federal ''undertakings'' conducted on private land. The term has been changed to ''actions'' to clarify that Federal agencies may not be responsible for ensuring that requirements of this section are met for all collections obtained as part of section 106 ''undertakings'' on non-Federal land.

One commenter recommended including language in § 10.8 (a) to require Federal agencies to consult with non-Federal institutions prior to initiating consultation with Indian tribes or Native Hawaiian organizations that are culturally affiliated with human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands but currently in the possession of the non-Federal institution. Another commenter recommended including specific language to stress that non-Federal institutions do not have authorization to unilaterally dispose of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands. Requirements regarding the relationship between Federal agencies and non-Federal institutions are not specified in the Act. ARPA and NHPA assign responsibility for long term care and curation of collections from Federal land and actions to the Federal agency that manages the land or undertakes the action.

One commenter recommended including language in § 10.8 (b) specifying that summaries should include information readily available from museum records as to whether an object is an unassociated funerary object, sacred object, or object of cultural patrimony, as well as an assessment of the general reliability of the records. Information regarding individual unassociated funerary objects, sacred objects, and objects of cultural patrimony is more appropriately shared during the consultation process. The regulatory text has not been changed.

Three commenters recommended including some provision for extension of the November 16, 1993 deadline for completion of the summaries in § 10.8 (c). While provisions for extensions to the November 16, 1995 deadline for completion of inventories of human remains and associated funerary objects are included in section 5 (c) of the Act, no such provisions for extension of the summary deadlines are included in either the statutory language or in the legislative history. Provisions for extensions to the summary deadlines have not been included in these regulations.

Six commenters recommended changes regarding the identification of consulting parties in § 10.8 (d)(1). Two commenters recommended deleting § 10.8 (d)(1)(i) requiring consultation with lineal descendants, since section 7 (a)(3) of the Act only requires consultation with lineal descendants to determine the place and manner of delivery of human remains, funerary objects, sacred objects, or objects of cultural patrimony being repatriated. The subsection requiring consultation with lineal descendants has been deleted. Two commenters recommended that identification of traditional religious leaders in § 10.8 (d)(1)(ii) be made by ''members of'' Indian tribes and Native Hawaiian organizations to be consistent with the definition of that term. The phrase has been edited to conform with the definition of in § 10.2 (a)(13). One commenter recommended deleting § 10.8 (d)(1)(ii)(A) and (a)(ii)(B) requiring consultation with Indian tribes from whose tribal or aboriginal lands unassociated funerary objects, sacred objects, and objects of cultural patrimony were recovered since section 7 (a)(2) of the Act specifies that only lineal descendants and culturally affiliated Indian tribes and Native Hawaiian organizations have standing to make a claim. Another commenter recommended including language in the rule indicating a presumption that the Indian tribe from whose tribal lands unassociated funerary objects, sacred objects, and objects of cultural patrimony were recovered is the custodian. The requirements in § 10.8 (d)(1)(ii)(A) and (d)(1)(ii)(B) are included to ensure that all Indian tribes and Native Hawaiian organizations that are potentially culturally affiliated with particular unassociated funerary objects, sacred objects, and objects of cultural patrimony are included in the consultation process. Whether an Indian tribe from whose tribal or aboriginal lands a particular unassociated funerary object, sacred object, or objects of cultural patrimony originated is culturally affiliated with that object must be determined on an item-by-item basis. Two commenters recommended deleting the phrase ''or likely to be'' in § 10.8 (d)(1)(iii). This subsection defines the class of consulting parties from which the culturally affiliated Indian tribe or Native Hawaiian organization will be identified. The phrase is used to indicate that the identification of consulting parties should be inclusive to ensure all Indian tribes and Native Hawaiian organizations that are, or are likely to be culturally affiliated with the unassociated funerary objects, sacred objects, or objects of cultural patrimony are included in the consultation process.

One commenter recommended revising the requirement to initiate consultation no later than the completion of the summary process in § 10.8 (d)(2) to indicate consultation must follow completion of the summary. Another commenter recommended revising the subsection to require the initiation of consultation as early as possible. Another commenter recommended requiring museums and Federal agencies to provide Indian tribes and Native Hawaiian organizations with a ''notice of summary'' indicating that their collections were under review. The Review Committee recommended revising the subsection to indicate that consultation should result in telephone or face-to-face dialogue. The drafters intend the summary to serve as an initial invitation from the museum or Federal agency to the Indian tribe or Native Hawaiian organization to engage in consultation regarding the identification of unassociated funerary objects, sacred objects, and objects of cultural patrimony in their collection. All museums and Federal agencies are required to complete their summaries by November 16, 1993. Language has been added to the subsection indicating that consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue with the appropriate Indian tribe official.

The Review Committee recommended requiring museums and Federal agencies to provide copies of their summaries to the Departmental Consulting Archeologist in § 10.8 (d)(3). The Departmental Consulting Archeologist provides staff support to the Review Committee, which in turn is required, under section 8 (c)(2) of the Act, to monitor the summary and inventory processes to ensure a fair, objective consideration and assessment of all available relevant information and evidence. The recommended language has been included. One commenter requested clarification regarding the requirement in the second sentence of § 10.8 (d)(3) that museums and Federal agencies, upon request, provide Indian tribes and Native Hawaiian organizations with access to records, catalogues, relevant studies, or other pertinent data. The regulatory language is drawn from section 6 (b)(2) of the Act.

Museums or Federal agencies may not limit Indian tribal access to information needed to determine the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of object covered by the summary. Museums or Federal agencies are under no obligation to pay the travel or other expenses of visiting Indian tribe representatives or traditional religious leaders.

One commenter recommended inclusion of time limits for Indian tribe and Native Hawaiian organization responses to museum and Federal agency requests for information outlined in § 10.8 (d)(4). No time limits for Indian tribe and Native Hawaiian organization response are included in the statutory language or the legislative history and none have been included in this subsection. Indian tribes and Native Hawaiian organizations are under no requirement to respond to museum or Federal agency requests for information. One commenter recommended revising the request for information under § 10.8 (d)(4)(i) to include the name and address of one or more traditional religious leaders. Requirements to request the name and address of traditional religious leaders have already been included under § 10.8 (d)(4)(iii). One commenter objected to the implication in § 10.8 (d)(4)(ii) that, prior to consultation, a museum or Federal agency official could identify a sacred object in their collection to request the name and address of the lineal descendants of its previous custodian. Documentation may be sufficient to indicate that a particular item in a museum of Federal agency's collection might fit the definition of sacred object. The museum or Federal agency should use this information to advance the consultation process by requesting the name and address of any lineal descendants of its previous custodian. One commenter recommended that the requests for information also include a description of the Indian tribe's traditional kinship system under § 10.8 (d)(4)(ii)(A). Information regarding an Indian tribe's traditional kinship system is only necessary when an individual is claiming an unassociated funerary object or sacred object, and is more appropriately requested at that time. One commenter recommended amending § 10.8 (d)(4)(iii) to require consultation and agreement with the recommendations of traditional religious leaders. The recommended requirement is not appropriate since the statutory language does not require Indian tribes or Native Hawaiian organizations to provide information regarding traditional religious leaders. One commenter recommended limiting the request for information to recommendations on how the consultation process should be conducted and that § 10.8 (d)(4)(i), (4)(ii), (4)(iii), and (4)(v) be deleted. The drafters recognize that the identification of lineal descendants, funerary objects, sacred objects, and objects of cultural patrimony may require Indian tribes and Native Hawaiian organizations to divulge sensitive information. Requesting the information at the beginning of consultation, however, may lead to a more open and effective consultation process. Indian tribe officials are under no obligation to respond to these inquires.

One commenter, fearing widespread misapplication of these regulations, recommended requiring museums and Federal agency officials to document certain information and use that information to identify unassociated funerary objects, sacred objects, objects of cultural patrimony, lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. The recommended text has been included as § 10.8 (a) and the subsequent section renumbered. Submission of this information to the Departmental Consulting Archeologist is not required by these regulations. The Review Committee, pursuant to section 8 (f), may request access to this information.

Two commenters requested clarification for requiring notification prior to repatriation of unassociated funerary objects, sacred objects, and objects of cultural patrimony in § 10.8 (e) (renumbered as § 10.8 (f)). The notification required in section 5 (d) of the Act ensures due process regarding the repatriation of human remains and associated funerary objects. Provisions of this subsection extend the notification procedures to ensure due process in the repatriation of unassociated funerary objects, sacred objects, and objects of cultural patrimony. The Review Committee recommended reducing the specificity of the requirement of an object-by-object listing of unassociated funerary objects, sacred objects, and objects of cultural patrimony to be repatriated. The regulatory text has been revised to require a description of any unassociated funerary objects, sacred objects, and objects of cultural patrimony to be repatriated in sufficient detail so as to allow others to determine if they are interested in the claim. Section 10.8 (e) of these regulations requires that museums and Federal agencies consider the same types of information as are required in § 10.9 (c) in evaluating requests for repatriation. Two commenters recommended including text establishing a deadline for responses to the required notification. A minimum waiting period of thirty (30) days following publication of the notice of intent to repatriate in the Federal Register is established in § 10.10 (a)(3). Any claim received by a museum or Federal agency prior to actual repatriation, however, should be given full consideration. One commenter recommended requiring museum officials to consult with the appropriate Federal agency officials prior to issuance of notices by the museum regarding unassociated funerary objects, sacred objects, or objects of cultural patrimony that were excavated intentionally or discovered inadvertently on Federal lands. Notices regarding the repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony that were excavated from Federal lands can only be issued by the appropriate Federal agency or by an institution specifically authorized to issue such notices by the appropriate Federal agency. One commenter recommended including language in this subsection informing Indian tribes and Native Hawaiian organizations of their right by law to request access to museum or Federal agency records as they relate to the review of their claim. The recommended language is included in § 10.8 (d)(3). The Review Committee recommended inclusion of text in this subsection to reiterate the requirement in § 10.10 (a)(3) that repatriation not occur until at least thirty (30) days after publication of a notice of intent to repatriate in the Federal Register. The proposed language has been included.

Section 10.9

This section presents procedures for carrying out section 5 of the Act related to conducting inventories of human remains and associated funerary objects in the collections of Federal agencies or museums receiving Federal funds. Fifteen commenters recommended changes to the inventory procedures in § 10.9. One commenter requested clarification of the deadlines and funding responsibility of this section. Section 10.9 (f) states that inventories under this section are to be completed not later than November 16, 1995. Funding responsibilities lie with the museums and Federal agencies maintaining such collections. Three commenters requested funding aid to comply with the Act. Although section 10 of the Act authorizes funding in

terms of grants to aid museums, Indian tribes, and Native Hawaiian organizations in carrying out the Act, funds were first appropriated during FY 1994.

One commenter requested clarification regarding the term ''geographical affiliation'' in the first sentence of § 10.9 (a). The term has been changed to ''geographical origin'' to reflect usage in section 5 (b)(2) of the Act. Two commenters recommended deleting the term ''undertakings'' from the last sentence of § 10.9 (a) because of its long history as a legal term of art under section 106 of the NHPA. The term has been changed to ''actions'' to avoid any confusion.

One commenter recommended inclusion of language in § 10.9 (b) stressing that Federal agency officials are responsible for carrying out consultation regarding human remains and associated funerary objects that were excavated or removed from Federal lands and that are currently in a non-Federal repository. One commenter suggested inclusion of language allowing shared responsibility between a Federal agency and curating institution. Federal agency officials are responsible for carrying out the Act regarding all human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, regardless of the type of institution that currently is in possession of those human remains, funerary objects, sacred objects, or objects of cultural patrimony. Section 10.9 (a) emphasizes this responsibility of Federal agencies. Two commenters recommended including a stipulation in § 10.9 (b) allowing a museum or Federal agency to declare that, due to unresponsiveness, no further contact with an Indian tribe or Native Hawaiian organization will be pursued. The drafters consider the recommended language counterproductive to achieving the type of effective consultation envisioned by the Act. Museums and Federal agencies are required to complete inventories of human remains and associated funerary objects in their collections by November 16, 1995. If no response is forthcoming after repeated attempts to contact Indian tribe officials by telephone, fax, and mail, the museum or Federal agency official may be required to complete the inventory without consultation to meet the statutory deadline. The drafters suggest museum and Federal agency officials document attempts to contact Indian tribe officials to demonstrate good faith compliance with these regulations and the Act.

One commenter recommended rewriting the requirements regarding consultation with lineal descendants in § 10.9 (b)(1)(i) to coordinate these activities through designated Indian tribe officials. The statute gives lineal descendants priority over culturally affiliated Indian tribes or Native Hawaiian organizations for the repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Establishing a system in which contact with lineal descendants is coordinated through Indian tribes or Native Hawaiian organizations would be detrimental to the rights of lineal descendants, particularly those that are not members of an Indian tribe or Native Hawaiian organization. One commenter recommended amending § 10.9 (b)(1)(i) to make it clear that museum and Federal agency officials must consult with lineal descendants of individuals whose remains and associated funerary objects are, in the opinion of the responsible Federal agency official or museum official, likely to be subject to the inventory provisions of these regulations. The drafters consider the current language to describe adequately the responsibilities of Federal agency officials or museum officials regarding consultation with lineal descendants.

One commenter recommended rewording the first sentence of § 10.9 (b)(1)(ii) to make it clear that consultation must be with Indian tribe officials. This change has been made. Two commenters recommended changing the second part of the sentence to indicate that traditional religious leaders must be recognized by members of the Indian tribe. The text has been changed to conform with the definition of in § 10.2 (a)(13). One commenter recommended inserting the word ''the'' prior to each usage of ''human remains'' throughout § 10.9 (b)(1)(ii)(A), (B), and (C) to make it clear that the procedures refer to specific human remains and not human remains in general. The recommended change has been made.

Three commenters recommended restructuring the consultation process in § 10.9 (b)(2) to allow museums and Federal agencies to make a tentative determination of cultural affiliation and then allow comment on the determination by interested groups. Section 5 (b)(1)(A) of the Act requires that inventories be completed in consultation with Indian tribe and Native Hawaiian organization officials and traditional religious leaders. The notification procedures in § 10.9 (e) are designed to ensure that all interested parties have the opportunity to participate in the consultation process. Another commenter recommended requiring consultation at the earliest possible moment in the inventory process. Language reflecting the latter recommendation has been included in the text.

One commenter recommended revising § 10.9 (b)(3)(iv) to state that if any additional documentation was used to identify cultural affiliation, this documentation must be made available on request. Language ensuring Indian tribes and Native Hawaiian organization access to relevant documentation is included in § 10.9 (e).

One commenter recommended deleting the word ''reasonably'' from § 10.9 (b)(4)(v) on the grounds that it is unreasonable for the United States to request an Indian tribe or Native Hawaiian organization to be reasonable in its beliefs regarding objects used for burial purposes. Reasonableness in this context refers to an accepted legal standard and has been retained in the regulatory text.

One commenter objected to the information requirements in § 10.9 (c) as exceeding requirements of the Act. Another commenter recommended amending the requirements to ensure that completion of the inventory would not be delayed. The information requirements in § 10.9 (c) were drawn from section 5 (a)(2) of the Act. One commenter recommended including text in § 10.9 (c) specifying the types of information that can not be requested. The Act does not identify any types of information that can not be requested. The drafters consider inclusion of such a requirement to be detrimental to the development of productive dialogues between museums, Federal agencies, Indian tribes, and Native Hawaiian organizations. One commenter recommended reorganizing the information requirements for clarity. Sections 10.9 (c)(1) through (c)(8) have been reorganized and renumbered. One commenter recommended changing § 10.9 (c)(7) to require either a description or photographic documentation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony, and not both. The drafters consider description of the human remains, funerary objects, sacred objects, or objects of cultural patrimony to be necessary in all cases, with photographic documentation considered appropriate in some circumstances. The types of information required in § 10.9 (c) have not been changed. The drafters feel that careful, detailed consideration of all human remains and associated funerary objects is critical to carry out the statutory requirements. Basic descriptive

information is necessary to ensure accountability and that the human remains and associated funerary objects conform to the statutory definitions. Detailed information from Federal agency or museum records and other sources are essential in reaching determinations of lineal descent or cultural affiliation as part of the inventory procedures.

One commenter recommended consolidating the two listings described in § 10.9 (d)(1) and (d)(2) into one list. Separation of the two lists reflects the different purposes intended in the § 10.9 (e) inventory process. The listing of culturally affiliated human remains and associated funerary objects is sent directly to Indian tribes and Native Hawaiian organizations, with a copy to the Departmental Consulting Archeologist. The listing of culturally unidentifiable human remains and associated funerary objects is sent only to the Departmental Consulting Archeologist. One commenter objected to use of the term ''clearly'' regarding the determination of cultural affiliation in § 10.9 (d)(1) as being contrary to Congressional intent and recommended deleting it from the regulatory text. The term was drawn from section 5 (d)(1)(B) of the Act and reflects Congressional intent. Another commenter recommended keeping the list of those human remains and associated funerary objects that are clearly identifiable as to tribal origin separate from those human remains and associated funerary objects are determined by reasonable belief to be cultural affiliated with the same Indian tribe or Native Hawaiian organization. Since both categories of human remains and associated funerary objects are considered to be culturally affiliated with the Indian tribe or Native Hawaiian organization, and are thus available for repatriation by that Indian tribe or Native Hawaiian organization, there is no practical reason to separate the lists.

One commenter recommended clarifying throughout this subsection that museum or Federal agency officials may need to send the same inventory to multiple Indian tribes or Native Hawaiian organizations. The text has been modified to reflect this concern.

Four commenters recommended replacing the word ''shall'' in the second sentence of § 10.9 (e)(4) with ''should.'' The Secretary has delegated authority to carry out some provisions of the Act to the Departmental Consulting Archeologist. These responsibilities include providing staff support to the Review Committee. The Review Committee is required under section 8 (c)(2) of the Act to monitor the inventory and identification process. Submission of inventories in electronic format is intended to facilitate the monitoring process. However, in recognition that some museums may have difficulty meeting the electronic format requirement, the drafters have changed the word ''shall'' in the second sentence to ''should.'' One commenter recommended also allowing Federal agencies to use alternative methods for submission of notices to the Departmental Consulting Archeologist. The phrase ''and Federal agencies'' has been inserted after ''museums'' in the text. The Review Committee recommended inclusion of language in this subsection requiring museums and Federal agencies to retain possession of culturally unidentifiable human remains pending promulgation of § 10.11 of these regulations. The recommended language has been included.

One commenter recommended requiring listings of culturally unidentifiable human remains described in § 10.9 (e)(6) be sent to all Indian tribes and Native Hawaiian organizations as well as to the Departmental Consulting Archeologist. Section 8 (c)(5) of the Act gives the Review Committee responsibility for recommending specific action for developing a process for disposition of culturally unidentifiable human remains. Section 10.11 of these regulations has been reserved for that purpose. The drafters consider it premature at this time to establish such procedures.

Two commenters requested extending the November 16, 1995 deadline for completion of inventories in § 10.9 (f). The deadline for completion of inventories is specified in section 5 (b)(1)(B) of the Act and would require Congressional action to change. One commenter recommended including language in this subsection to indicate that the requirement to repatriate may be suspended during the preparation of the inventories. The drafters consider such a suspension of the requirement to repatriate counter to statutory language and legislative history. Two commenters recommended including language in this subsection to allow Federal agencies to apply for extensions of time to complete their inventories. Section 5 (c) of the Act specified that any museum which has made a good faith effort but which has been unable to complete an inventory may appeal to the Secretary for an extension of the time requirements. No provisions are provided in the Act for Federal agencies to apply for extension. One commenter recommended including language in this subsection limiting the number and length of extensions granted to a museum to complete its inventories. The Secretary will determine the number and length of extensions on a case-by-case basis. One commenter recommended requiring museums to apply for an extension in the second sentence of § 10.9 (f). While a museum may chose not to apply for an extension, it is likely that failure to do so would be taken into account by the Secretary in determining if the museum had failed to comply with the requirements of the Act. One commenter requested clarification regarding a situation in which a museum fails to complete an inventory of human remains and associated funerary objects from Federal lands. Federal agencies are responsible for completion of summaries and inventories of all human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands regardless of the type of institution in which they are currently curated. One commenter recommended incorporation of personnel qualifications in this subsection for individuals involved in the completion of the inventory plan. Museums are expected in make sure that all of their personnel are qualified to undertake the tasks expected of them.

Section 10.10

Thirty-three commenters recommended changes to the section on repatriation. One commenter recommended rewriting § 10.10 (a)(1) and § 10.10 (b)(1) to emphasis that all of the criteria for repatriation must be met. The initial sentence of each section has been rewritten to state ''If all the following criteria are met...'' In addition, the word ''and'' has been added at the end of all but the final roman numeralled subsections in these two sections. Another commenter requested clarification of the term ''expeditiously'' which is used in both sections. The rule of statutory construction generally holds that undefined terms are interpreted in their common meaning.

One commenter recommended inclusion of language in § 10.10 (a)(1)(ii) and (b)(1)(ii) allowing several Indian tribes or Native Hawaiian organizations to make joint claims for human remains, funerary objects, sacred objects, or objects of cultural patrimony. The drafters feel the current language allows for joint claims. Another commenter recommended amending § 10.10 (a)(1)(ii) and § 10.10 (b)(1)(ii) to clarify that the cultural affiliation of human remains, funerary objects, sacred objects, or objects of cultural patrimony can be established independently of the

summary and inventory processes by presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization. Additional text has been inserted under § 10.10 (a)(1)(ii)(B) and § 10.10 (b)(1)(ii)(B) to clarify this issue. Another commenter requested inserting the phrase ''culturally affiliated'' before ''Indian tribe'' in § 10.10 (a)(1)(iii), The recommended text has been included.

One commenter recommended deleting the phrase ''which, if standing alone before the introduction of evidence to the contrary'' from § 10.10 (a)(1)(iii). This phrase is taken directly from section 7 (c) of the Act regarding the standard of repatriation for unassociated funerary objects, sacred objects, and objects of cultural patrimony; and has been retained in the regulations.

One commenter recommended rewriting § 10.10 (a)(1)(iv) to make clear that a Federal agency or museum must present evidence to overcome the inference of tribal custody and prove its right of possession to unassociated funerary objects, sacred objects, or objects of cultural patrimony. The existing text is drawn from section 7 (c) of the Act and is interpreted to provide Federal agencies with some discretion as to whether information regarding right of possession must be used to challenge a request for repatriation.

One commenter recommended deleting § 10.10 (a)(1)(v) and § 10.10 (b)(1)(iii), referring to specific repatriation exemptions, to avoid confusion and havoc with Indian tribes. The specific exemptions to repatriation referred to in these subsections come from section 7 (b) and (e) of the Act.

Two commenters recommended changes to § 10.10 (a)(2) regarding right of possession. One commenter requested clarification of how right of possession might be demonstrated for prehistoric human remains, funerary objects, sacred objects, or objects of cultural patrimony. The right of possession basis for retaining cultural items in an existing collection does not apply to human remains or associated funerary objects, only to unassociated funerary objects, sacred objects, and objects of cultural patrimony. A right of possession for prehistoric cultural items fitting these categories might be written authorization from a competent authority to excavate, remove, and curate such items from a particular area or site. Another commenter recommended locating the definition of right of possession would more appropriately with the other definitions in § 10.2. The concept of right of possession has limited applicability in these regulations to unassociated funerary objects, sacred objects, and objects of cultural patrimony. The explanation of right of possession is retained at this place in the regulations because it is only used for this specific aspect of the Act.

Three commenters recommended changes to § 10.10 (a)(3) and § 10.10 (b)(2) regarding notification. Two commenters requested clarification of whether the ninety (90) days during which repatriation must take place begins from the day a request for repatriation is received or from the day the responsible museum of Federal agency official makes a positive determination that the criteria for repatriation apply. The first sentence of this section has been redrafted to clarify that the ninety (90) day period begins with the receipt of a written request for repatriation from a culturally affiliated Indian tribe or Native Hawaiian organization. Another commenter stated that ninety (90) days may not be sufficient to determine to validity of each request. Section 7 of the Act requires that repatriation must be done ''expeditiously'' and implies in section 7 (b) a ninety (90) day time frame for such actions. Text has been added to provide for a longer period if mutually agreed upon. It is noted that determination of the validity of a claim should not be difficult since this period only applies to requests from Indian tribes and Native Hawaiian organizations that have been determined to be culturally affiliated with specific human remains, funerary objects, sacred objects, or objects of cultural patrimony.

Five commenters recommended changes to § 10.10 (b) regarding the repatriation of human remains and associated funerary objects. One commenter identified the criteria for repatriating human remains and associated funerary objects as being very confusing and recommended rewriting them for comprehension by lay people. One commenter recommended reiterating the applicability of ''right of possession'' to human remains and associated funerary objects recognized in the last sentence of section 2 (13) of the Act in this section of the regulations. American law generally recognizes that human remains can not be ''owned.'' This interpretation is consistent with the second sentence of section 2 (13) of the Act that specifically refers to unassociated funerary objects, sacred objects, and objects of cultural patrimony, and with section 7 (a)(1) and (a)(2) of the Act in which no right of possession to human remains or associated funerary objects is inferred. One commenter strongly objected to the requirement in § 10.10 (b)(2) that repatriation not occur until at least thirty days after publication of a notice of inventory completion in the Federal Register, referring to section 11 (1)(A) of the Act that states that nothing in the Act shall be construed to limit the authority of any museum or Federal agency to return or repatriate. Publication of the notice in the Federal Register was recognized in section 5 (d)(3) of the Act as necessary to ensure Constitutional due process requirements. Delaying a repatriation for thirty (30) days following publication of the notice provides any other legitimate claimant with an opportunity to come forward with a claim. This requirement in no way limits any organization's authority to repatriate. Section 11 (2) of the Act states that nothing in the Act shall be construed to delay action on repatriation requests ''that are pending on the date of enactment of this Act,'' and makes it clear that Congress anticipated there might be some subsequent delays of repatriation initiated after November 16, 1990, due to the statutory provisions. One commenter asked whether a second Federal Register notice is required to document a claim following publication of a Notice of Inventory Completion. Requests for repatriation made after completion of the inventory and publication of the Notice of Inventory Completion in the Federal Register do not require publication of a second notice, unless it is determined as a result of a competing claim or otherwise that a different Indian tribe or Native Hawaiian organization than the one identified in the original notice is the proper recipient. In such instances, a second Federal Register notice is required prior to repatriation. In situations where more than one Indian tribe or Native Hawaiian organization was listed in the original notice, the museum or Federal agency official should consult with each of the listed Indian tribes or Native Hawaiian organizations prior to repatriating to any one of them.

Three commenters recommended deleting § 10.10 (c)(1) regarding the exception to the repatriation requirements for studies of human remains, funerary objects, sacred objects, or objects of cultural patrimony of major benefit to the United States. This exemption is drawn from section 7 of the Act. One commenter identified the phrase ''commenced prior to receipt of a request'' in this subsection as not being included in the statutory language and recommended deleting it. The phrase has been deleted. Six

commenters recommended clarifying the concept of ''major benefit'' in the exemption for completion of a specific scientific study in § 10.10 (c)(1). Such determinations necessarily will have to be made on a case-by-case basis. One commenter recommended that the deadline after completion of a study by which human remains, funerary objects, sacred objects, or objects of cultural patrimony must be repatriated be left to the discretion of the parties involved. The requirement that human remains, funerary objects, sacred objects, or objects of cultural patrimony be repatriated no later than ninety days (90) after completion of the study is drawn from the statutory language.

One commenter recommended replacing the phrase ''proper recipient'' in the first sentence of § 10.10 (c)(2) with ''most appropriate recipient.'' The recommended change has been made. One commenter recommended including language in this subsection requiring museums and Federal agencies to comply with multiple party claims. The language in these regulations does not preclude claims for repatriation made by groups of lineal descendants or groups of Indian tribes or Native Hawaiian organizations. Museum and Federal agency officials are responsible for assessing the merits of each claim received.

One commenter recommended deleting the ''takings exemption'' in § 10.10 (c)(3) since it requires complex legal analysis that would unduly burden museum and Federal agency officials and is contrary to the provisions of the Act regarding the determination of custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The language in this subsection was drawn from section 2 (13) of the Act. Six commenters requested additional clarification of the subsection. Additional language has been included in the text. One commenter objected to the ''globalization'' of the constitutional test of a Fifth Amendment taking in this subsection to include human remains and associated funerary objects, stating that such an interpretation is not supported by the statutory language and recommending that the drafters refrain from attempting to redress in regulation what the commenter considers a facially unconstitutional element of the Act. The regulation has not been changed in response to this comment. The Act does not indicate an express intention to effectuate a legislative or regulatory taking. It is possible, though not likely, that human remains may be subject to Fifth Amendment concerns, e.g., where the human remains have been incorporated into another object. The same commenter recommended including text to exempt museums from the threat of civil penalties in situations where the museum invokes its authority to refuse to repatriate human remains and associated funerary objects based on ''otherwise applicable property law.'' A determination that repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony constitutes a taking of property without just compensation within the meaning of the Fifth Amendment of the United States Constitution must be made by a court of competent jurisdiction and can not be ''invoked'' by a museum or Federal agency. Assessment of civil penalties by the Secretary will necessarily be made on a case-by-case basis and, as such, the recommended exemption is not considered appropriate. However, the drafters consider it unlikely that the Secretary would assess civil penalties while a takings issue is being considered by a court of competent jurisdiction.

One commenter recommended deleting the reference in § 10.10 (c)(4) to other repatriation limitations in § 10.15. Section 10.15 includes limitation and remedies applying to both the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal land or tribal lands and to the repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of museums or Federal agencies.

Two commenters requested clarification regarding procedures related to the transfer of custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants or Indian tribes in § 10.10 (d). Museum and Federal agency officials are responsible for making decisions regarding place and manner of repatriation. However, prior to making such decisions, they must first consult with the requesting lineal descendants or culturally affiliated Indian tribes.

One commenter recommended including additional text requiring museum and Federal agency officials to inform recipients of repatriations of any known treatments, such as application of pesticides, preservatives, or other substances, that might represent a potential hazard to the human remains, funerary objects, sacred objects, or objects of cultural patrimony or the persons handling them. The recommended text has been included as § 10.10 (e) and subsequent subsections renumbered.

Two commenters recommended including language in § 10.10 (e) (renumbered as § 10.10 (f)) advising museum and Federal agency officials that, upon the request of Indian tribe officials, they take steps to ensure that information of a particularly sensitive nature is not made available to the general public. The recommended text has been included in the rule. Documentation of some cultural items, particularly sacred objects and objects of cultural patrimony, is expected to require Indian tribe officials and traditional religious leaders to divulge some information considered sensitive to the Indian tribe or Native Hawaiian organization. There is currently no exemption available to protect such sensitive information from disclosure under the Freedom of Information Act. Museum or Federal officials may wish to ensure that sensitive information does not become part of the public record by not writing such information down in the first place.

Two commenters identified ''unidentified human remains,'' referred to in § 10.10 (f) (renumbered as § 10.10 (g)) as a category not supported by the statutory language, and recommended deleting the term. Section 8 (c)(5) of the Act required the Review Committee to compile an inventory and make recommendations regarding specific actions for developing a process for disposition of ''culturally unidentifiable human remains.'' Section 10.10 (g) has been amended to reflect that statutory language.

One commenter requested that § 10.10 reference the requirements of the Migratory Bird Treaty Act, the Bald and Golden Eagle Act, the Endangered Species Act and the Marine Mammal Act. While it is not appropriate to include the requirements of these acts in the regulations, museums, Federal agencies, and Indian tribes should be aware that additional statutes and regulations may affect the transport and possession of repatriated objects. For additional information, contact, the U.S. Fish and Wildlife Service, Division of Law Enforcement, PO Box 3247, Arlington VA 22203–3247.

Section 10.11

This section has been reserved for procedures related to the disposition of culturally unidentifiable human remains in museum or Federal agency collections. One commenter questioned the authority under which the Federal government can determine the final disposition of human remains for which no cultural affiliation can reasonably be established. Another commenter recommended changing the title of this

section to read ''culturally and geographically unidentifiable'' to ensure that a ''simple-minded or hostile reading of the rules'' would not result in assignment of many human remains to the catch-all category. One commenter requested clarification for procedures concerning ''affected remains of . . . biologically extinct peoples''. Section 8 (c)(5) and (c)(7) of the Act gives the Review Committee the responsibilities of recommending specific actions for developing a process for disposition of ''culturally unidentifiable human remains'' and consulting with the Secretary in the development of regulations to carry out the statute. Section 13 of the Act charges the Secretary with promulgating regulations to carry out the statute. One commenter recommended interring all culturally unidentifiable human remains in a tribal or intertribal cemetery. One commenter recommended sending inventories of all culturally unidentifiable human remains to all Indian tribes and Native Hawaiian organizations. One commenter requested that this section be published promptly. Another commenter recommended seeking Indian tribal input in developing this section to ensure that ''the dominant society [not dictate] the proposed language to protect their own interests.'' A draft of this section is being developed currently and will submitted to the Review Committee for discussion and recommendations prior to publication as proposed regulation for public comment in the Federal Register.

Section 10.12

This section has been reserved for procedures related to the assessment of civil penalties by the Secretary against any museum that fails to comply with the requirements of the statute. One commenter requested prompt publication of this section. A draft of this section is currently being developed and will submitted to the Review Committee for discussion prior to publication for public comment in the Federal Register.

Section 10.13

This section has been reserved for procedures related to the future applicability of the statute. One commenter recommended that the section should include continuing responsibilities for museums and Federal agencies to update summaries and inventories of human remains, funerary objects, sacred objects, or objects of cultural patrimony to reflect new accessions, first time receipt of Federal funds, and the recognition of new Indian tribes and Native Hawaiian organizations. One commenter requested clarification on the subject of future accessions. One commenter stressed that tribal input, comment and recommendations are imperative in formulating this section. A draft of this section is currently being developed and will be submitted to the Review Committee for discussion prior to publication for public comment in the Federal Register. One commenter proposed inclusion of a ten year time limit during which Indian tribes must make claims for repatriation. Time limits for claims were discussed by Congress when the bill was being considered but were not included in the Act. Inclusion of such time limits in the regulations would contradict Congressional intent.

Section 10.14

Eighteen commenters recommended changes to the section on lineal descent and cultural affiliation. Two commenters recommended further identification in § 10.14 (a) of the parties responsible for completing the required activities. On Federal lands, Federal agency officials are responsible for determining which modern Indian tribes and Native Hawaiian organizations may have valid claims upon human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally or discovered inadvertently on lands they manage. For existing collections, the museum or Federal agency official is responsible for assembling, describing, evaluating human remains, funerary objects, sacred objects, or objects of cultural patrimony and making determinations regarding their cultural affiliation and disposition. It is the responsibility of lineal descendants, Indian tribes or Native Hawaiian organizations that disagree with determinations of cultural affiliation made by a Federal agency or museum official to develop and present information to challenge that determination.

Another commenter recommended changing all references to Indian tribe in this section to ''Indian tribe or tribes'' to reflect the fact that Indian tribes may bring joint claims for certain items. The drafters consider the current language to support the possibility of joint claims.

One commenter identified the criteria for determining lineal descendants in § 10.14 (b) as being overly restrictive and recommended broadening them to allow for both individual and Indian tribe and Native Hawaiian organization claims. One commenter requested including a procedure ''for independent verification of claimed descent.'' Criteria for determining lineal descent have been narrowly defined to reflect the priority given these claims under section 3 and section 7 of the Act. One commenter requested that the section include procedures for independent verification of any claims of lineal descent based upon traditional kinship systems. Museum or Federal agency officials are responsible for evaluating claims of lineal descent.

Three commenters identified criteria for determining cultural affiliation under § 10.14 (c)(1), (2) and (3) as placing an undue and unrealistic burden of proof on Indian tribes and Native Hawaiian organizations, and recommended fewer requirements. The three criteria — existence of an identifiable present-day Indian tribe or Native Hawaiian organization, evidence of the existence of an identifiable earlier group, and evidence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group—are the components of the statutory definition of cultural affiliation at section 2 (2) of the Act. They have been retained in the regulations.

Three commenters recommended rewording § 10.14 (c)(2) for clarification. The second sentence of § 10.14 (c)(2) has been rewritten to read: ''Evidence to support this requirement may include, but is not necessarily limited to: . . .'' One commenter recommended rewording § 10.14 (c)(2)(ii) to emphasize the desirability of demonstrating linkages between claimants and archeological remains. One commenter questioned whether it is possible to make biological distinctions between earlier groups as suggested in § 10.14 (c)(2)(iii). Cultural affiliation between particular human remains, funerary objects, sacred objects, or objects of cultural patrimony and particular Indian tribes and Native Hawaiian organizations must be determined on a case-by-case basis.

One commenter recommended regarding human remains or cultural objects found within the traditional (aboriginal) territory of an Indian tribe as being culturally affiliated with that Indian tribe, regardless of the antiquity of the human remains, funerary objects, sacred objects, or objects of cultural patrimony. The statutory provisions related to intentional excavation and inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands (section 3 of the Act) includes provisions for the disposition of human remains, funerary objects, sacred objects, or objects of

cultural patrimony to the Indian tribe that is recognized as aboriginally occupying the area in which the human remains or objects were recovered, if upon notice, such tribe states a claim for such human remains or items. No such criteria are included in the statutory sections regarding repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections.

One commenter recommended inclusion of language from House Report 101–877 (page 5) clarifying that determinations of cultural affiliation should be based on an overall evaluation of the totality of the circumstances and evidence and should not be precluded solely because of some gaps in the record. Language from the House Report has been included as § 10.14 (d), and the subsequent sections relettered.

One commenter noted that the types of evidence listed in § 10.14 (e) were originally derived from section 7 (a)(4) of the Act—which deals exclusively with the determination of cultural affiliation — and recommends that lineal descent should be established through normally accepted methods of evidence. Section 7 (a) of the Act, of which section 7 (a)(4) is a subpart, deals with both determinations of lineal descent and cultural affiliation. It is the opinion of the drafters that each of the types of evidence listed could potentially be used to support a claim of lineal descent and should be available for use by potential claimants.

One commenter objected to oral tradition and folklore being allowed as evidence in § 10.14 (d), particularly for those areas, such as central, southwestern, southern, and coastal Texas, ''where the aboriginal inhabitants have no biological descendants.'' One commenter recommended including a statement that physical anthropological/biological, archeological, and other ''hard'' scientific evidence will have the greatest bearing in determining the cultural affiliation of prehistoric materials, scaled with weight increasing as distance in time increases. One commenter recommended inclusion of a statement regarding ''standards of evidence.'' The applicability and strength of particular types of evidence must be determined on a case-by-case basis. It would be inappropriate to place stipulations on the applicability of various types of evidence in regulation.

Two commenters recommended changing the last sentence of § 10.14 (e) to require that cultural affiliation be established with scientific certainty to avoid any misuse of the Act. A standard of scientific certainty is not consistent with Congressional intent. The statement of evidence in this subsection is drawn from section 7 (a)(4) of the Act. Two other commenters questioned whether this subsection might give the impression that scientific research is of no value in determining cultural affiliation. Section 7 (a)(4) identifies scientific information related to numerous fields as having relevance to the determination of cultural affiliation. One commenter recommended stipulating that no repatriation will occur until the analysis is completed. Section 5 (a) specifies that the geographic and cultural affiliation of human remains and associated funerary objects be determined ''to the extent possible based on information possessed by the museum of Federal agency.'' No new scientific research is required. Delaying repatriation until new scientific research is completed contradicts the intent of Congress unless that scientific research is considered to be of major benefit to the United States.

Section 10.15

Eleven commenters recommended changes to the section on repatriation limitations and remedies. One commenter stated the section was not consistent with the statute and recommended deleting it in its entirety. Two commenters identified § 10.15 (a)(1) as being unduly harsh to Indian tribes and Native Hawaiian organizations, and recommended deleting it. Section 10.15 (a)(1) ensures that any claim received prior to the disposition or repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must be considered by the museum or Federal agency. Claims made after disposition or repatriation have occurred are properly the responsibility of the receiving lineal descendant, Indian tribe, or Native Hawaiian organization. The subsection has been retained as it is important for the protection of museums and Federal agencies that comply with the Act and regulations. One commenter recommended adding another subsection under the title ''Multiple Claimants'' to address such situations. Three commenters recommended specifying that a time period for competing parties to reach agreement on the appropriate disposition or repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. No time period has been established because it appears to be contrary to Congressional intent. One commenter recommended inclusion of a statement specifying who decides the disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that cannot be shown to be culturally affiliated to a present-day Indian tribe or Native Hawaiian organization. Section 10.11 of the regulations has been reserved for procedures related to the disposition of culturally unidentifiable human remains.

One commenter recommended completing § 10.15 (b), reserved for ''Failure to claim where no repatriation or disposition has occurred,'' as quickly as possible. Another commenter questioned whether the statutory language supports the inclusion of unclaimed cultural items as well as human remains. Section 3 (b) of the Act addresses the disposition of ''unclaimed human remains and objects'' and requires the Secretary to publish regulations to carry out their disposition in consultation with the Review Committee, Native American groups, and representatives of museums and the scientific community.

One commenter asked for clarification regarding whether the denial of a request for repatriation implied in § 10.15 (c) would have the effect of stopping the ''90-day clock'' for expedient repatriation. Museum and Federal agency officials are required to make a decision regarding claims for the disposition or repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony within ninety (90) days of receipt of that claim. Once that decision is made, the museum or Federal agency official has carried out their responsibility. Another commenter recommended that this subsection state specifically that museums and Federal agencies must repatriate within ninety (90)-days of receipt of a written request. Section 10.10 (a)(3) and (b)(2) specify that museums and Federal agencies must repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony in their collections within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of § 10.10 (a)(1) and (b)(1), respectively, provided that the repatriation may not occur until at least thirty (30) days after publication of the appropriate notice in the Federal Register.

Section 10.16

Two commenters recommended changes to the section on the Review Committee. One commenter recommended deletion of the term ''culturally unidentifiable human remains'' on the grounds that there is no such category recognized under the Act.

Section 8 (b)(5) of the Act requires the Review Committee to compile an inventory of culturally unidentifiable human remains and recommend specific actions for developing a process for disposition of such human remains. Another commenter recommended specifying the criteria to be used by the Review Committee in resolving disputes. One commenter requested clarification as to the ''arbitrator'' for disputes arising from the Act. The Review Committee has established its own guidelines for facilitating the resolution of disputes that include both procedures and criteria. Copies of these procedures are available from the Department of the Interior through the Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service.

Section 10.17

Three commenters recommended changes to the section on dispute resolution. One commenter recommended strengthening the section to provide a realistic and definitive forum for resolving problems. Another commenter recommended including criteria to be used by the Review Committee in resolving disputes. A third commenter recommended that appropriate time frames should be established for Review Committee comments concerning disputes. The Review Committee has established its own guidelines for facilitating the resolution of disputes that include both procedures and criteria. Copies of these procedures are available from the Department of the Interior through the Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service.

Appendix A

Four commenters recommended changes to the sample summary. Two commenters recommended narrowing the focus of the summary from collections held by a museum which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony to a summary of those specific objects. This proposed text was not changed for reasons previously presented in the discussion of section 10.8.

One commenter objected to the enumeration of sites and objects in the seventh paragraph of the sample summary as being both impractical and impossible. The enumeration of sites and objects in the sample summary are identified clearly as approximations. Further, provision of this type of information to Indian tribes and Native Hawaiian organizations is consistent with the requirements of section 6 of the Act as clarified in section 10.8 of these regulations.

One commenter objected to the apparently broad access to museum records given Indian tribes in the final paragraph. The sentence in question closely paraphrases section 6 (b)(2) of the Act and has not been changed.

Appendix B

This appendix was reserved for a sample inventory of human remains and associated funerary objects. One commenter stressed the importance of developing this section as quickly as possible. A sample inventory of human remains and associated funerary objects currently has been developed in consultation with the Review Committee and distributed to Indian tribes, Native Hawaiian organizations, museums, and Federal agencies. This reserved appendix has been deleted from the rule.

Appendix C

The notice of inventory completion in this appendix has been updated with a more recent version and retitled as Appendix B.

Appendix D

The Review Committee recommended deleting this section that had been reserved for a sample memorandum of understanding dealing with repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony in Federal collections from the regulations. Guidance regarding such memoranda of understanding will be developed and distributed by the Department of the Interior.

Appendix E

The Review Committee recommended deleting this section that had been reserved for a sample memorandum of understanding dealing with intentional excavation on Federal or tribal lands from the regulations. Guidance regarding such memoranda of understanding will be developed and distributed by the Department of the Interior.

Authorship These proposed regulations were prepared by Dr. Francis P. McManamon (Departmental Consulting Archeologist, National Park Service), Dr. C. Timothy McKeown (NAGPRA Program Leader, National Park Service), and Mr. Lars Hanslin (Senior Attorney, Office of the Solicitor), in consultation with the Native American Graves Protection and Repatriation Review Committee as directed by section 8 (c)(7) of the Act.

Compliance with the Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq* (OMB control number 1024-0144). Public reporting burden for this collection of information is expected to average 100 hours for the exchange of summary/inventory information between a museum or Federal agency and an Indian tribe or Native Hawaiian organization and six hours per response for the notification to the Secretary, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collected information. Two commenters questioned use of an average amount of time to characterize the expected burden. While the amount of time required to complete the reporting requirements of these regulations will vary between institutions depending on the size and nature of their collections and the comprehensiveness of their documentation, review of summaries, inventories, and notices received by the Departmental Consulting Archeologist confirms the accuracy of the previous estimates. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, Box 37127, Washington D.C. 20013 and to the Office of Management and Budget, Paperwork Reduction Project, Washington DC 20503.

Compliance with Other Laws

This rule has been reviewed under Executive Order 12866. The final rule implements provisions of the Native American Graves Protection and Repatriation Act of 1990 and addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. The final rule requires that any museum receiving Federal funds prepare summaries and conduct inventories. These requirements are within professionally accepted standards for museum record keeping consistent with the purposes of such institutions or organizations. Grants have been awarded during FY 1994 and FY 1995 to assist museums in these tasks. Federal agencies will incur costs in two ways: (1) Preparing the summaries and conducting the

inventories; and (2) conducting consultation prior to planned excavations and following inadvertent discoveries on Federal or tribal lands. The Congressional Budget Office estimated costs for summary and inventory activities at between $5 and $30 million over a five year period. Many of the actions required of Federal agencies under item (2) are recommended or required by previous legislation—such as the National Historic Preservation Act and the Archaeological Resources Protection Act—and costs for these activities are not expected to increase appreciably, particularly if the Federal agencies are able to coordinate their consultation and review activities as encouraged by these regulations and other guidance documents.

The Department of the Interior certifies that this document does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department of the Interior has determined that these final regulations meet the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

The Department of the Interior has determined that these final regulations will not have a significant effect on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). In addition, the Department of the Interior has determined that these final regulations are categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact statement has been prepared.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Graves, Hawaiian Natives, Historic preservation, Indians—Claims, Indians—lands, Museums, Public lands, Reporting and record keeping requirements.

For the reasons set out in the preamble, 43 CFR Subtitle A is amended by adding Part 10 to read as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

Authority: 25 U.S.C. 3001 *et seq.*

Subpart A—Introduction

§ 10.1 Purpose and applicability.

(a) *Purpose.* These regulations carry out provisions of the Native American Graves Protection and Repatriation Act of 1990 (Pub.L. 101–601; 25 U.S.C. 3001–3013;104 Stat. 3048–3058). These regulations develop a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

(b) *Applicability.* (1) These regulations pertain to the identification and appropriate disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are:

(i) In Federal possession or control; or

(ii) In the possession or control of any institution or State or local government receiving Federal funds; or

(iii) Excavated intentionally or discovered inadvertently on Federal or tribal lands.

(2) These regulations apply to human remains, funerary objects, sacred objects, or objects of cultural patrimony which are indigenous to Alaska, Hawaii, and the continental United States, but not to territories of the United States.

(3) Throughout these regulations are decision points which determine their applicability in particularly circumstances, e.g., a decision as to whether a museum ''controls'' human remains and cultural objects within the meaning of the regulations, or, a decision as to whether an object is a ''human remain,'' ''funerary object,'' ''sacred object,'' or ''object of cultural patrimony'' within the meaning of the regulations. Any final determination making the Act or these regulations inapplicable is subject to review pursuant to section 15 of the Act.

§ 10.2 Definitions.

In addition to the term *Act*, which means the Native American Graves Protection and Repatriation Act as described above, definitions used in these regulations are grouped in seven classes: Parties required to comply with these regulations; Parties with standing to make claims under these regulations; Parties responsible for implementing these regulations; Objects covered by these regulations; Cultural affiliation; Types of land covered by these regulations; and Procedures required by these regulations.

(a) *Who must comply with these regulations?* (1) *Federal agency* means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution as specified in section 2 (4) of the Act.

(2) *Federal agency official* means any individual authorized by delegation of authority within a Federal agency to perform the duties relating to these regulations.

(3) *Museum* means any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds.

(i) The term ''*possession*'' means having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of these regulations. Generally, a museum or Federal agency would not be considered to have possession of human remains, funerary objects, sacred objects, or objects of cultural patrimony on loan from another individual, museum, or Federal agency.

(ii) The term ''*control*'' means having a legal interest in human remains,

funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of these regulations whether or not the human remains, funerary objects, sacred objects or objects of cultural patrimony are in the physical custody of the museum or Federal agency. Generally, a museum or Federal agency that has loaned human remains, funerary objects, sacred objects, or objects of cultural patrimony to another individual, museum, or Federal agency is considered to retain control of those human remains, funerary objects, sacred objects, or objects of cultural patrimony for purposes of these regulations.

(iii) The phrase ''*receives Federal funds*'' means the receipt of funds by a museum after November 16, 1990, from a Federal agency through any grant, loan, contract (other than a procurement contract), or other arrangement by which a Federal agency makes or made available to a museum aid in the form of funds. Federal funds provided for any purpose that are received by a larger entity of which the museum is a part are considered Federal funds for the purposes of these regulations. For example, if a museum is a part of a State or local government or a private university and the State or local government or private university receives Federal funds for any purpose, the museum is considered to receive Federal funds for the purpose of these regulations.

(4) *Museum official* means the individual within a museum designated as being responsible for matters relating to these regulations.

(5) *Person* means an individual, partnership, corporation, trust, institution, association, or any other private entity, or, any official, employee, agent, department, or instrumentality of the United States, or of any Indian tribe or Native Hawaiian organization, or of any State or political subdivision thereof that discovers human remains, funerary objects, sacred objects or objects of cultural patrimony on Federal or tribal lands after November 16, 1990.

(b) *Who has standing to make a claim under these regulations?*

(1) *Lineal descendant* means an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descendance to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations.

(2) *Indian tribe* means any tribe, band, nation, or other organized Indian group or community of Indians, including any Alaska Native village or corporation as defined in or established by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Secretary will distribute a list of Indian tribes for the purposes of carrying out this statute through the Departmental Consulting Archeologist.

(3)(i) *Native Hawaiian organization* means any organization that:

(A) Serves and represents the interests of Native Hawaiians;

(B) Has as a primary and stated purpose the provision of services to Native Hawaiians; and

(C) Has expertise in Native Hawaiian affairs.

(ii)The term *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. Such organizations must include the Office of Hawaiian Affairs and *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei.*

(4) *Indian tribe official* means the principal leader of an Indian tribe or Native Hawaiian organization or the individual officially designated by the governing body of an Indian tribe or Native Hawaiian organization or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to these regulations.

(c) *Who is responsible for carrying out these regulations?*

(1) *Secretary* means the Secretary of the Interior.

(2) *Review Committee* means the advisory committee established pursuant to section 8 of the Act.

(3) *Departmental Consulting Archeologist* means the official of the Department of the Interior designated by the Secretary as responsible for the administration of matters relating to these regulations. Communications to the Departmental Consulting Archeologist should be addressed to:

Departmental Consulting Archeologist
National Park Service,
PO Box 37127
Washington, DC 20013–7127.

(d) *What objects are covered by these regulations?* The Act covers four types of Native American objects. The term *Native American* means of, or relating to, a tribe, people, or culture indigenous to the United States, including Alaska and Hawaii:

(1) *Human remains* means the physical remains of a human body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item.

(2) *Funerary objects* means items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or Native Hawaiian organization or as being related to specific individuals or families or to known human remains. The term *burial site* means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as part of the death rite or ceremony of a culture, individual human remains were deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of grave site. For purposes of completing the summary requirements in § 10.8 and the inventory requirements of § 10.9:

(i) *Associated funerary objects* means those funerary objects for which the human remains with which they were placed intentionally are also in the possession or control of a museum or Federal agency. Associated funerary objects also means those funerary objects that were made exclusively for burial purposes or to contain human remains.

(ii) *Unassociated funerary objects* means those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency. Objects that were displayed with individual human remains as part of a death rite or ceremony of a culture and subsequently returned or distributed according to traditional custom to living descendants or other individuals are not considered unassociated funerary objects.

(3) *Sacred objects* means items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their

present-day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony. The term *traditional religious leader* means a person who is recognized by members of an Indian tribe or Native Hawaiian organization as:

(i) Being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or

(ii) Exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe or organization's cultural, ceremonial, or religious practices.

(4) *Objects of cultural patrimony* means items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native Hawaiian organization itself, rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group. Objects of cultural patrimony include items such as Zuni War Gods, the Confederacy Wampum Belts of the Iroquois, and other objects of similar character and significance to the Indian tribe or Native Hawaiian organization as a whole.

(e) *What is cultural affiliation?* Cultural affiliation means that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence — based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion — reasonably leads to such a conclusion.

(f) *What types of lands to the excavation and discovery provisions of these regulations apply to?*

(1) *Federal lands* means any land other than tribal lands that are controlled or owned by the United States Government, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). United States ''control,'' as used in this definition, refers to those lands not owned by the United States but in which the United States has a legal interest sufficient to permit it to apply these regulations without abrogating the otherwise existing legal rights of a person.

(2) *Tribal lands* means all lands which:

(i) Are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States; or

(ii) Comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151; or

(iii) Are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and section 4 of the Hawaiian Statehood Admission Act (Pub.L. 86–3; 73 Stat. 6).

(iv) Actions authorized or required under these regulations will not apply to tribal lands to the extent that any action would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution.

(g) *What procedures are required by these regulations?*

(1) *Summary* means the written description of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony required by § 10.8 of these regulations.

(2) *Inventory* means the item-by-item description of human remains and associated funerary objects.

(3) *Intentional excavation* means the planned archeological removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (c) of the Act.

(4) *Inadvertent discovery* means the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3 (d) of the Act.

Subpart B—Human Remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or Tribal Lands

§ 10.3 Intentional archeological excavations.

(a) *General.* This section carries out section 3 (c) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally from Federal or tribal lands after November 16, 1990.

(b) *Specific Requirements.* These regulations permit the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or tribal lands only if:

(1) The objects are excavated or removed following the requirements of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470aa et seq.) and its implementing regulations. Regarding private lands within the exterior boundaries of any Indian reservation, the Bureau of Indian Affairs (BIA) will serve as the issuing agency for any permits required under the Act. For BIA procedures for obtaining such permits, see 25 CFR part 262 or contact the Deputy Commissioner of Indian Affairs, Department of the Interior, Washington, DC 20240. Regarding lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Pub. L. 86–3, the Department of Hawaiian Home Lands will serve as the issuing agency for any permits required under the Act, with the Hawaii State Historic Preservation Division of the Department of Land and Natural Resources acting in an advisory capacity for such issuance. Procedures and requirements for issuing permits will be consistent with those required by the ARPA and its implementing regulations;

(2) The objects are excavated after consultation with or, in the case of tribal lands, consent of, the appropriate Indian tribe or Native Hawaiian organization pursuant to § 10.5;

(3) The disposition of the objects is consistent with their custody as described in § 10.6; and

(4) Proof of the consultation or consent is shown to the Federal agency official or other agency official responsible for the issuance of the required permit.

(c) *Procedures.* (1) The Federal agency official must take reasonable steps to determine whether a planned activity may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands. Prior to issuing any approvals or permits for activities, the Federal agency official must notify in writing the Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated. The Federal

agency official must also notify any present-day Indian tribe which aboriginally occupied the area of the planned activity and any other Indian tribes or Native Hawaiian organizations that the Federal agency official reasonably believes are likely to have a cultural relationship to the human remains, funerary objects, sacred objects, or objects of cultural patrimony that are expected to be found. The notice must be in writing and describe the planned activity, its general location, the basis upon which it was determined that human remains, funerary objects, sacred objects, or objects of cultural patrimony may be excavated, and, the basis for determining likely custody pursuant to § 10.6. The notice must also propose a time and place for meetings or consultations to further consider the activity, the Federal agency's proposed treatment of any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any excavated human remains, funerary objects, sacred objects, or objects of cultural patrimony. Written notification should be followed up by telephone contact if there is no response in 15 days. Consultation must be conducted pursuant to § 10.5.

(2) Following consultation, the Federal agency official must complete a written plan of action (described in § 10.5(e)) and execute the actions called for in it.

(3) If the planned activity is also subject to review under section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), the Federal agency official should coordinate consultation and any subsequent agreement for compliance conducted under that Act with the requirements of § 10.3 (c)(2) and § 10.5. Compliance with these regulations does not relieve Federal agency officials of requirements to comply with section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*).

(4) If an Indian tribe or Native Hawaiian organization receives notice of a planned activity or otherwise becomes aware of a planned activity that may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony on tribal lands, the Indian tribe or Native Hawaiian organization may take appropriate steps to:

(i) Ensure that the human remains, funerary objects, sacred objects, or objects of cultural patrimony are excavated or removed following § 10.3 (b), and

(ii) make certain that the disposition of any human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently as a result of the planned activity are carried out following § 10.6.

§ 10.4 Inadvertent discoveries.

(a) *General.* This section carries out section 3 (d) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are discovered inadvertently on Federal or tribal lands after November 16, 1990.

(b) *Discovery.* Any person who knows or has reason to know that he or she has discovered inadvertently human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands after November 16, 1990, must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible Federal agency official with respect to Federal lands, and, with respect to tribal lands, to the responsible Indian tribe official. The requirements of these regulations regarding inadvertent discoveries apply whether or not an inadvertent discovery is duly reported. If written confirmation is provided by certified mail, the return receipt constitutes evidence of the receipt of the written notification by the Federal agency official or Indian tribe official.

(c) *Ceasing activity.* If the inadvertent discovery occurred in connection with an on-going activity on Federal or tribal lands, the person, in addition to providing the notice described above, must stop the activity in the area of the inadvertent discovery and make a reasonable effort to protect the human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently.

(d) *Federal lands.* (1) As soon as possible, but no later than three (3) working days after receipt of the written confirmation of notification with respect to Federal lands described in § 10.4 (b), the responsible Federal agency official must:

(i) Certify receipt of the notification;

(ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;

(iii) Notify by telephone, with written confirmation, the Indian tribes or Native Hawaiian organizations likely to be culturally affiliated with the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, the Indian tribe or Native Hawaiian organization which aboriginally occupied the area, and any other Indian tribe or Native Hawaiian organization that is reasonably known to have a cultural relationship to the human remains, funerary objects, sacred objects, or objects of cultural patrimony. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently, their condition, and the circumstances of their inadvertent discovery;

(iv) Initiate consultation on the inadvertent discovery pursuant to § 10.5;

(v) If the human remains, funerary objects, sacred objects, or objects of cultural patrimony must be excavated or removed, follow the requirements and procedures in § 10.3 (b) of these regulations; and

(vi) Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following § 10.6.

(2) *Resumption of activity.* The activity that resulted in the inadvertent discovery may resume thirty (30) days after certification by the notified Federal agency of receipt of the written confirmation of notification of inadvertent discovery if the resumption of the activity is otherwise lawful. The activity may also resume, if otherwise lawful, at any time that a written, binding agreement is executed between the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations that adopt a recovery plan for the excavation or removal of the human remains, funerary objects, sacred objects, or objects of cultural patrimony following § 10.3 (b)(1) of these regulations. The disposition of all human remains, funerary objects, sacred objects, or objects of cultural patrimony must be following § 10.6.

(e) *Tribal lands.* (1) As soon as possible, but no later than three (3) working days after receipt of the written confirmation of notification with respect to Tribal lands described in § 10.4 (b), the responsible Indian tribe official may:

(i) Certify receipt of the notification;

(ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;

(iii) If the human remains, funerary objects, sacred objects, or objects of

cultural patrimony must be excavated or removed, follow the requirements and procedures in § 10.3 (b) of these regulations; and

(iv) Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following § 10.6.

(2) Resumption of Activity. The activity that resulted in the inadvertent discovery may resume if otherwise lawful after thirty (30) days of the certification of the receipt of notification by the Indian tribe or Native Hawaiian organization.

(f) *Federal agency officials.* Federal agency officials should coordinate their responsibilities under this section with their emergency discovery responsibilities under section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) *et seq.*), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)). Compliance with these regulations does not relieve Federal agency officials of the requirement to comply with section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) *et seq.*), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)).

(g) *Notification requirement in authorizations.* All Federal authorizations to carry out land use activities on Federal lands or tribal lands, including all leases and permits, must include a requirement for the holder of the authorization to notify the appropriate Federal or tribal official immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to § 10.4 (b) of these regulations.

§ 10.5 Consultation.

Consultation as part of the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands must be conducted in accordance with the following requirements.

(a) *Consulting parties.* Federal agency officials must consult with known lineal descendants and Indian tribe officials:

(1) from Indian tribes on whose aboriginal lands the planned activity will occur or where the inadvertent discovery has been made; and

(2) from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony; and

(3) from Indian tribes and Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(b) *Initiation of consultation.* (1) Upon receiving notice of, or otherwise becoming aware of, an inadvertent discovery or planned activity that has resulted or may result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands, the responsible Federal agency official must, as part of the procedures described in § 10.3 and § 10.4, take appropriate steps to identify the lineal descendant, Indian tribe, or Native Hawaiian organization entitled to custody of the human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to § 10.6 and § 10.14. The Federal agency official shall notify in writing:

(i) any known lineal descendants of the individual whose remains, funerary objects, sacred objects, or objects of cultural patrimony have been or are likely to be excavated intentionally or discovered inadvertently; and

(ii) the Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently; and

(iii) the Indian tribes which aboriginally occupied the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been or are likely to be excavated intentionally or discovered inadvertently; and

(iv) the Indian tribes or Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently.

(2) The notice must propose a time and place for meetings or consultation to further consider the intentional excavation or inadvertent discovery, the Federal agency's proposed treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(3) The consultation must seek to identify traditional religious leaders who should also be consulted and seek to identify, where applicable, lineal descendants and Indian tribes or Native Hawaiian organizations affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(c) *Provision of information.* During the consultation process, as appropriate, the Federal agency official must provide the following information in writing to the lineal descendants and the officials of Indian tribes or Native Hawaiian organizations that are or are likely to be affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands:

(1) A list of all lineal descendants and Indian tribes or Native Hawaiian organizations that are being, or have been, consulted regarding the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(2) An indication that additional documentation used to identify affiliation will be supplied upon request.

(d) *Requests for information.* During the consultation process, Federal agency officials must request, as appropriate, the following information from Indian tribes or Native Hawaiian organizations that are, or are likely to be, affiliated pursuant to § 10.6 (a) with intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony:

(1) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(2) Names and appropriate methods to contact lineal descendants who should be contacted to participate in the consultation process;

(3) Recommendations on how the consultation process should be conducted; and

(4) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers likely to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.

(e) *Written plan of action.* Following consultation, the Federal agency official must prepare, approve, and sign a written plan of action. A copy of this plan of action must be provided to the lineal descendants, Indian tribes and Native Hawaiian organizations involved. Lineal descendants and Indian tribe official(s) may sign the written plan of action as appropriate. At a minimum, the plan of action must comply with § 10.3 (b)(1) and document the following:

(1) The kinds of objects to be considered as cultural items as defined in § 10.2 (b);

(2) The specific information used to determine custody pursuant to § 10.6;

(3) The planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;

(4) The planned archeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;

(5) The kinds of analysis planned for each kind of object;

(6) Any steps to be followed to contact Indian tribe officials at the time of intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(7) The kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony by members of the Indian tribe or Native Hawaiian organization;

(8) The nature of reports to be prepared; and

(9) The disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony following § 10.6.

(f) *Comprehensive agreements.* Whenever possible, Federal agencies should enter into comprehensive agreements with Indian tribes or Native Hawaiian organizations that are affiliated with specific human remains, funerary objects, sacred objects, or objects of cultural patrimony and have claimed, or are likely to claim, those human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. These agreements should address all Federal agency land management activities that could result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Consultation should lead to the establishment of a process for effectively carrying out the requirements of these regulations regarding standard consultation procedures, the determination of custody consistent with procedures in this section and § 10.6, and the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The signed agreements, or the correspondence related to the effort to reach agreements, must constitute proof of consultation as required by these regulations.

(g) *Traditional religious leaders.* The Federal agency official must be cognizant that Indian tribe officials may need to confer with traditional religious leaders prior to making recommendations. Indian tribe officials are under no obligation to reveal the identity of traditional religious leaders.

§ 10.6 Custody.

(a) *Priority of custody.* This section carries out section 3 (a) of the Act, subject to the limitations of § 10.15, regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands after November 16, 1990. For the purposes of this section, custody means ownership or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after November 16, 1990. Custody of these human remains, funerary objects, sacred objects, or objects of cultural patrimony is, with priority given in the order listed:

(1) In the case of human remains and associated funerary objects, in the lineal descendant of the deceased individual as determined pursuant to § 10.14 (b);

(2) In cases where a lineal descendant cannot be ascertained or no claim is made, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:

(i) In the Indian tribe on whose tribal land the human remains, funerary objects, sacred objects, or objects of cultural patrimony were discovered inadvertently;

(ii) In the Indian tribe or Native Hawaiian organization that has the closest cultural affiliation with the human remains, funerary objects, sacred objects, or objects of cultural patrimony as determined pursuant to § 10.14 (c); or

(iii) In circumstances in which the cultural affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony cannot be ascertained and the objects were discovered inadvertently on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of an Indian tribe:

(A) In the Indian tribe aboriginally occupying the Federal land on which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were discovered inadvertently, or

(B) If it can be shown by a preponderance of the evidence that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony, in the Indian tribe or Native Hawaiian organization that has the strongest demonstrated relationship with the objects.

(b) Custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony and other provisions of the Act apply to all intentional excavations and inadvertent discoveries made after November 16, 1990, including those made before the effective date of these regulations.

(c) *Final notice, claims and disposition with respect to Federal lands.* Upon determination of the lineal descendant, Indian tribe, or Native Hawaiian organization that under these regulations appears to be entitled to custody of particular human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, the responsible Federal agency official must, subject to the notice required herein and the limitations of § 10.15, transfer custody of the objects to the lineal descendant, Indian tribe, or Native Hawaiian organization following appropriate procedures, which must respect traditional customs and practices of the affiliated Indian tribes or Native Hawaiian organizations in each instance. Prior to any such disposition by a Federal agency official, the Federal agency official must publish general notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently and, if applicable, in a newspaper of general circulation in the area(s) in which affiliated Indian tribes or Native Hawaiian organizations members now reside. The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The notice must be published at least two (2) times at least a week apart, and the transfer must not take place until at least thirty (30) days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the Federal agency official cannot clearly determine which claimant is entitled to custody, the Federal agency must not transfer custody of the objects until such time as the proper recipient is determined pursuant to these

regulations. The Federal agency official must send a copy of the notice and information on when and in what newspaper(s) the notice was published to the Departmental Consulting Archeologist.

§ 10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony. [Reserved]

Subpart C—Human remains, funerary objects, sacred objects, or objects of cultural patrimony in museums and Federal collections

§ 10.8 Summaries.

(a) *General.* This section carries out section 6 of the Act. Under section 6 of the Act, each museum or Federal agency that has possession or control over collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony must complete a summary of these collections based upon available information held by the museum or Federal agency. The purpose of the summary is to provide information about the collections to lineal descendants and culturally affiliated Indian tribes or Native Hawaiian organizations that may wish to request repatriation of such objects. The summary serves in lieu of an object-by-object inventory of these collections, although, if an inventory is available, it may be substituted. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

(b) *Contents of summaries.* For each collection or portion of a collection, the summary must include: an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and information relevant to identifying lineal descendants, if available, and cultural affiliation.

(c) *Completion.* Summaries must be completed not later than November 16, 1993.

(d) *Consultation.* (1) Consulting parties. Museum and Federal agency officials must consult with Indian tribe officials and traditional religious leaders:

(A) From whose tribal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated;

(B) That are, or are likely to be, culturally affiliated with unassociated funerary objects, sacred objects, or objects of cultural patrimony; and

(C) From whose aboriginal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated.

(2) Initiation of consultation. Museum and Federal agency officials must begin summary consultation no later than the completion of the summary process. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue with the appropriate Indian tribe official.

(3) Provision of information. During summary consultation, museum and Federal agency officials must provide copies of the summary to lineal descendants, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the cultural items. A copy of the summary must also be provided to the Departmental Consulting Archeologist. Upon request by lineal descendants or Indian tribe officials, museum and Federal agency officials must provide lineal descendants, Indian tribe officials and traditional religious leaders with access to records, catalogues, relevant studies, or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of objects covered by the summary. Access to this information may be requested at any time and must be provided in a reasonable must be provided access to such materials.

(4) Requests for information. During the summary consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with their collections:

(i) Name and address of the Indian tribe official to act as representative in consultations related to particular objects;

(ii) Recommendations on how the consultation process should be conducted, including:

(A) Names and appropriate methods to contact any lineal descendants, if known, of individuals whose unassociated funerary objects or sacred objects are included in the summary;

(B) Names and appropriate methods to contact any traditional religious leaders that the Indian tribe or Native Hawaiian organization thinks should be consulted regarding the collections; and

(iii) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers to be sacred objects or objects of cultural patrimony.

(e) Museum and Federal agency officials must document the following information regarding unassociated funerary objects, sacred objects, and objects of cultural patrimony in their collections and must use this documentation in determining the individuals, Indian tribes, and Native Hawaiian organizations with which they are affiliated:

(1) Accession and catalogue entries;

(2) Information related to the acquisition of unassociated funerary object, sacred object, or object of cultural patrimony, including:

(i) the name of the person or organization from whom the object was obtained, if known;

(ii) The date of acquisition,

(iii) The place each object was acquired, i.e., name or number of site, county, state, and Federal agency administrative unit, if applicable; and

(iv) The means of acquisition, i.e., gift, purchase, or excavation;

(3) A description of each unassociated funerary object, sacred object, or object of cultural patrimony, including dimensions, materials, and photographic documentation, if appropriate, and the antiquity of such objects, if known;

(4) A summary of the evidence used to determine the cultural affiliation of the unassociated funerary objects, sacred objects, or objects of cultural patrimony pursuant to § 10.14 of these regulations.

(f) Notification. Repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants, culturally affiliated Indian tribes, or Native Hawaiian organizations as determined pursuant to § 10.10 (a), must not proceed prior to submission of a notice of intent to repatriate to the Departmental Consulting Archeologist, and publication of the notice of intent to repatriate in the Federal Register. The notice of intent to repatriate must describe the unassociated funerary objects, sacred objects, or objects of cultural patrimony being claimed in sufficient detail so as to enable other individuals, Indian tribes or Native Hawaiian organizations to determine their interest in the claimed objects. It must include information that identifies each claimed unassociated funerary object, sacred object, or object of cultural patrimony and the circumstances surrounding its acquisition, and describes the objects that are clearly identifiable as to cultural

affiliation. It must also describe the objects that are not clearly identifiable as being culturally affiliated with a particular Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the objects, are likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization. The Departmental Consulting Archeologist must publish the notice of intent to repatriate in the Federal Register. Repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the Federal Register.

§ 10.9 Inventories.

(a) *General.* This section carries out section 5 of the Act. Under section 5 of the Act, each museum or Federal agency that has possession or control over holdings or collections of human remains and associated funerary objects must compile an inventory of such objects, and, to the fullest extent possible based on information possessed by the museum or Federal agency, must identify the geographical and cultural affiliation of each item. The purpose of the inventory is to facilitate repatriation by providing clear descriptions of human remains and associated funerary objects and establishing the cultural affiliation between these objects and present-day Indian tribes and Native Hawaiian organizations. Museums and Federal agencies are encouraged to produce inventories first on those portions of their collections for which information is readily available or about which Indian tribes or Native Hawaiian organizations have expressed special interest. Early focus on these parts of collections will result in determinations that may serve as models for other inventories. Federal agencies must ensure that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

(b) *Consultation*—(1) *Consulting parties.* Museum and Federal agency officials must consult with:

(i) Lineal descendants of individuals whose remains and associated funerary objects are likely to be subject to the inventory provisions of these regulations; and

(ii) Indian tribe officials and traditional religious leaders:

(A) From whose tribal lands the human remains and associated funerary objects originated;

(B) That are, or are likely to be, culturally affiliated with human remains and associated funerary objects; and

(C) From whose aboriginal lands the human remains and associated funerary objects originated.

(2) *Initiation of consultation.* Museum and Federal agency officials must begin inventory consultation as early as possible, no later in the inventory process than the time at which investigation into the cultural affiliation of human remains and associated funerary objects is being conducted. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue.

(3) *Provision of information.* During inventory consultation, museums and Federal agency officials must provide the following information in writing to lineal descendants, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains and associated funerary objects.

(i) A list of all Indian tribes and Native Hawaiian organizations that are, or have been, consulted regarding the particular human remains and associated funerary objects;

(ii) A general description of the conduct of the inventory;

(iii) The projected time frame for conducting the inventory; and

(iv) An indication that additional documentation used to identify cultural affiliation will be supplied upon request.

(4) *Requests for information.* During the inventory consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with their collections:

(i) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains and associated funerary objects;

(ii) Recommendations on how the consultation process should be conducted, including:

(A) Names and appropriate methods to contact any lineal descendants of individuals whose remains and associated funerary objects are or are likely to be included in the inventory; and

(B) Names and appropriate methods to contact traditional religious leaders who should be consulted regarding the human remains and associated funerary objects.

(iii) Kinds of cultural objects that the Indian tribe or Native Hawaiian organization reasonably believes to have been made exclusively for burial purposes or to contain human remains of their ancestors.

(c) *Required information.* The following documentation must be included, if available, for all inventories completed by museum or Federal agency officials:

(1) Accession and catalogue entries, including the accession/catalogue entries of human remains with which funerary objects were associated;

(2) Information related to the acquisition of each object, including:

(i) the name of the person or organization from whom the object was obtained, if known;

(ii) The date of acquisition,

(iii) The place each object was acquired, i.e., name or number of site, county, state, and Federal agency administrative unit, if applicable; and

(iv) The means of acquisition, i.e., gift, purchase, or excavation;

(3) A description of each set of human remains or associated funerary object, including dimensions, materials, and, if appropriate, photographic documentation, and the antiquity of such human remains or associated funerary objects, if known;

(4) A summary of the evidence, including the results of consultation, used to determine the cultural affiliation of the human remains and associated funerary objects pursuant to § 10.14 of these regulations.

(d) *Documents.* Two separate documents comprise the inventory:

(1) A listing of all human remains and associated funerary objects that are identified as being culturally affiliated with one or more present-day Indian tribes or Native Hawaiian organizations. The list must indicate for each item or set of items whether cultural affiliation is clearly determined or likely based upon the preponderance of the evidence; and

(2) A listing of all culturally unidentifiable human remains and associated funerary objects for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined.

(e) *Notification.* (1) If the inventory results in the identification or likely identification of the cultural affiliation of any particular human remains or associated funerary objects with one or more Indian tribes or Native Hawaiian organizations, the museum or Federal agency, not later than six (6) months after completion of the inventory, must send such Indian tribes or Native Hawaiian organizations the inventory of culturally affiliated human remains, including all information required

under § 10.9 (c), and a notice of inventory completion that summarizes the results of the inventory.

(2) The notice of inventory completion must summarize the contents of the inventory in sufficient detail so as to enable the recipients to determine their interest in claiming the inventoried items. It must identify each particular set of human remains or each associated funerary object and the circumstances surrounding its acquisition, describe the human remains or associated funerary objects that are clearly identifiable as to cultural affiliation, and describe the human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with an Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the human remains or associated objects, are identified as likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization.

(3) If the inventory results in a determination that the human remains are of an identifiable individual, the museum or Federal agency official must convey this information to the lineal descendant of the deceased individual, if known, and to the Indian tribe or Native Hawaiian organization of which the deceased individual was culturally affiliated.

(4) The notice of inventory completion and a copy of the inventory must also be sent to the Departmental Consulting Archeologist. These submissions should be sent in both printed hard copy and electronic formats. Information on the proper format for electronic submission and suggested alternatives for museums and Federal agencies unable to meet these requirements are available from the Departmental Consulting Archeologist.

(5) Upon request by an Indian tribe or Native Hawaiian organization that has received or should have received a notice of inventory completion and a copy of the inventory as described above, a museum or Federal agency must supply additional available documentation to supplement the information provided with the notice. For these purposes, the term documentation means a summary of existing museum or Federal agency records including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding the acquisition and accession of human remains and associated funerary objects.

(6) If the museum or Federal agency official determines that the museum or Federal agency has possession of or control over human remains that cannot be identified as affiliated with a particular individual, Indian tribes or Native Hawaiian organizations, the museum or Federal agency must provide the Department Consulting Archeologist notice of this result and a copy of the list of culturally unidentifiable human remains and associated funerary objects. The Departmental Consulting Archeologist must make this information available to members of the Review Committee. Section 10.11 of these regulations will set forth procedures for disposition of culturally unidentifiable human remains of Native American origin. Museums or Federal agencies must retain possession of such human remains pending promulgation of § 10.11 unless legally required to do otherwise, or recommended to do otherwise by the Secretary. Recommendations regarding the disposition of culturally unidentifiable human remains may be requested prior to final promulgation of § 10.11.

(7) The Departmental Consulting Archeologist must publish notices of inventory completion received from museums and Federal agencies in the Federal Register.

(f) *Completion*. Inventories must be completed not later than November 16, 1995. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements from the Secretary. An indication of good faith efforts must include, but not necessarily be limited to, the initiation of active consultation and documentation regarding the collections and the development of a written plan to carry out the inventory process. Minimum components of an inventory plan are: a definition of the steps required; the position titles of the persons responsible for each step; a schedule for carrying out the plan; and a proposal to obtain the requisite funding.

§ 10.10 Repatriation.

(a) *Unassociated funerary objects, sacred objects, and objects of cultural patrimony*—(1) *Criteria.* Upon the request of a lineal descendant, Indian tribe, or Native Hawaiian organization, a museum or Federal agency must expeditiously repatriate unassociated funerary objects, sacred objects, or objects of cultural patrimony if all the following criteria are met:

(i) The object meets the definitions established in § 10.2 (b) (4), (5) or (6); and

(ii) The cultural affiliation of the object is established:

(A) through the summary, consultation, and notification procedures in § 10.14 of these regulations; or

(B) by presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization pursuant to section 7(c) of the Act; and

(iii) The known lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the museum or Federal agency does not have a right of possession to the objects as defined in § 10.10 (a)(2); and

(iv) The agency or museum is unable to present evidence to the contrary proving that it does have a right of possession as defined below; and

(v) None of the specific exceptions listed in § 10.10 (c) apply.

(2) *Right of possession.* For purposes of this section, ''right of possession'' means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object, or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession to that object.

(3) *Notification.* Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of § 10.10 (a)(1) from a culturally affiliated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the Federal Register as described in § 10.8.

(b) *Human remains and associated funerary objects*—(1) *Criteria.* Upon the request of a lineal descendant, Indian tribe, or Native Hawaiian organization, a museum and Federal agency must expeditiously repatriate human remains and associated funerary objects if all of the following criteria are met:

(i) The human remains or associated funerary object meets the definitions established in § 10.2 (b)(1) or (b)(3); and

(ii) The affiliation of the deceased individual to known lineal descendant, present day Indian tribe, or Native Hawaiian organization:

(A) has been reasonably traced through the procedures outlined in § 10.9 and § 10.14 of these regulations; or

(B) has been shown by a preponderance of the evidence presented by a requesting Indian tribe or Native Hawaiian organization pursuant to section 7(c) of the Act; and

(iii) None of the specific exceptions listed in § 10.10 (c) apply.

(2) *Notification.* Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of § 10.10 (b)(1) from the culturally affiliated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of inventory completion in the Federal Register as described in § 10.9.

(c) *Exceptions.* These requirements for repatriation do not apply to:

(1) Circumstances where human remains, funerary objects, sacred objects, or objects of cultural patrimony are indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States. Human remains, funerary objects, sacred objects, or objects of cultural patrimony in such circumstances must be returned no later than ninety (90) days after completion of the study; or

(2) Circumstances where there are multiple requests for repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony and the museum or Federal agency, after complying with these regulations, cannot determine by a preponderance of the evidence which requesting party is the most appropriate claimant. In such circumstances, the museum or Federal agency may retain the human remains, funerary objects, sacred objects, or objects of cultural patrimony until such time as the requesting parties mutually agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or as ordered by a court of competent jurisdiction; or

(3) Circumstances where a court of competent jurisdiction has determined that the repatriation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of a museum would result in a taking of property without just compensation within the meaning of the Fifth Amendment of the United States Constitution, in which event the custody of the objects must be as provided under otherwise applicable law. Nothing in these regulations must prevent a museum or Federal agency, where otherwise so authorized, or a lineal descendant, Indian tribe, or Native Hawaiian organization, from expressly relinquishing title to, right of possession of, or control over any human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(4) Circumstances where the repatriation is not consistent with other repatriation limitations identified in § 10.15 of these regulations.

(d) *Place and manner of repatriation.* The repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must be accomplished by the museum or Federal agency in consultation with the requesting lineal descendants, or culturally affiliated Indian tribe or Native Hawaiian organization, as appropriate, to determine the place and manner of the repatriation.

(e) The museum official or Federal agency official must inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

(f) *Record of repatriation.* (1) Museums and Federal agencies must adopt internal procedures adequate to permanently document the content and recipients of all repatriations.

(2) The museum official or Federal agency official, at the request of the Indian tribe official, may take such steps as are considered necessary pursuant to otherwise applicable law, to ensure that information of a particularly sensitive nature is not made available to the general public.

(g) *Culturally unidentifiable human remains.* If the cultural affiliation of human remains cannot be established pursuant to these regulations, the human remains must be considered culturally unidentifiable. Museum and Federal agency officials must report the inventory information regarding such human remains in their holdings to the Departmental Consulting Archeologist who will transmit this information to the Review Committee. The Review Committee is responsible for compiling an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency, and, for recommending to the Secretary specific actions for disposition of such human remains.

§ 10.11 Disposition of culturally unidentifiable human remains. [Reserved]

§ 10.12 Civil penalties. [Reserved]

§ 10.13 Future applicability. [Reserved]

Subpart D—General

§ 10.14 Lineal descent and cultural affiliation.

(a) *General.* This section identifies procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian tribes or Native Hawaiian organizations and human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently from Federal lands. They may also be used by Indian tribes and Native Hawaiian organizations with respect to tribal lands.

(b) *Criteria for determining lineal descent.* A lineal descendant is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descendence to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced.

(c) *Criteria for determining cultural affiliation.* Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:

(1) Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and

(2) Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:

(i) Establish the identity and cultural characteristics of the earlier group,

(ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or

(iii) Establish the existence of the earlier group as a biologically distinct population; and

(3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.

(d) A finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.

(e) *Evidence.* Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by using the following types of evidence: Geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

(f) *Standard of proof.* Lineal descent of a present-day individual from an earlier individual and cultural affiliation of a present-day Indian tribe or Native Hawaiian organization to human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by a preponderance of the evidence. Claimants do not have to establish cultural affiliation with scientific certainty.

§ 10.15 Repatriation limitations and remedies.

(a) *Failure to claim prior to repatriation.* (1) Any person who fails to make a timely claim prior to the repatriation or transfer of human remains, funerary objects, sacred objects, or objects of cultural patrimony is deemed to have irrevocably waived any right to claim such items pursuant to these regulations or the Act. For these purposes, a ''timely claim'' means the filing of a written claim with a responsible museum or Federal agency official prior to the time the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony at issue are duly repatriated or disposed of to a claimant by a museum or Federal agency pursuant to these regulations.

(2) If there is more than one (1) claimant, the human remains, funerary object, sacred object, or objects of cultural patrimony may be held by the responsible museum or Federal agency or person having custody thereof pending resolution of the claim. Any person who has custody of such human remains, funerary objects, sacred objects, or objects of cultural patrimony and does not claim entitlement to them must place the objects in the custody of the responsible museum or Federal agency for retention until the question of custody is resolved.

(b) *Failure to claim where no repatriation or disposition has occurred. [Reserved*]

(c) *Exhaustion of remedies.* No person is considered to have exhausted his or her administrative remedies with respect to the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony subject to subpart B of these regulations, or, with respect to Federal lands, subpart C of these regulations, until such time as the person has filed a written claim for repatriation or disposition of the objects with the responsible museum or Federal agency and the claim has been duly denied following these regulations.

(d) *Savings provisions.* Nothing in these regulations can be construed to:

(1) Limit the authority of any museum or Federal agency to:

(i) Return or repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to Indian tribes, Native Hawaiian organizations, or individuals; and

(ii) Enter into any other agreement with the consent of the culturally affiliated Indian tribe or Native Hawaiian organization as to the disposition of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(2) Delay actions on repatriation requests that were pending on November 16, 1990;

(3) Deny or otherwise affect access to court;

(4) Limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) Limit the application of any State or Federal law pertaining to theft of stolen property.

§ 10.16 Review committee.

(a) *General.* The Review Committee will advise Congress and the Secretary on matters relating to these regulations and the Act, including, but not limited to, monitoring the performance of museums and Federal agencies in carrying out their responsibilities, facilitating and making recommendations on the resolution of disputes as described further in § 10.17, and compiling a record of culturally unidentifiable human remains that are in the possession or control of museums and Federal agencies and recommending actions for their disposition.

(b) *Recommendations.* Any recommendation, finding, report, or other action of the Review Committee is advisory only and not binding on any person. Any records and findings made by the Review Committee may be admissible as evidence in actions brought by persons alleging a violation of the Act.

§ 10.17 Dispute resolution.

(a) *Formal and informal resolutions.* Any person who wishes to contest actions taken by museums, Federal agencies, Indian tribes, or Native Hawaiian organizations with respect to the repatriation and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony is encouraged to do so through informal negotiations to achieve a fair resolution of the matter. The Review Committee may aid in this regard as described below. In addition, the United States District Courts have jurisdiction over any action brought that alleges a violation of the Act.

(b) *Review Committee Role.* The Review Committee may facilitate the informal resolution of disputes relating to these regulations among interested parties that are not resolved by good faith negotiations. Review Committee actions may include convening meetings between parties to disputes, making advisory findings as to contested facts, and making recommendations to the disputing parties or to the Secretary as to the proper resolution of disputes consistent with these regulations and the Act.

Appendix A to Part 10—Sample Summary

The following is a generic sample and should be used as a guideline for preparation of summaries tailoring the information to the specific circumstances of each case.

Before November 17, 1993

Chairman or Other Authorized Official

Indian tribe or Native Hawaiian organization

Street

State

Dear Sir/Madame Chair:

I write to inform you of collections held by our museum which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. This notification is required by section 6 of

the Native American Graves Protection and Repatriation Act.

Our ethnographic collection includes approximately 200 items specifically identified as being manufactured or used by members of your Indian tribe or Native Hawaiian organization. These items represent various categories of material culture, including sea and land hunting, fishing, tools, household equipment, clothing, travel and transportation, personal adornment, smoking, toys, and figurines. The collection includes thirteen objects identified in our records as ''medicine bags.''

Approximately half of these items were collected by John Doe during his expedition to your reservation in 1903 and accessioned by the museum that same year (see Major Museum Publication, no. 65 (1965).

Another 50 of these items were collected by Jane Roe during her expeditions to your reservation between 1950–1960 and accessioned by the museum in 1970 (see Major Museum: no. 75 (1975). Accession information indicates that several of these items were collected from members of the Able and Baker families.

For the remaining approximately 50 items, which were obtained from various collectors between 1930 and 1980, additional collection information is not readily available.

In addition to the above mentioned items, the museum has approximately 50 ethnographic items obtained from the estate of a private collector and identified as being collected from the ''northwest portion of the State.''

Our archeological collection includes approximately 1,500 items recovered from ten archeological sites on your reservation and another 5,000 items from fifteen sites within the area recognized by the Indian Claims Commission as being part of your Indian tribe's aboriginal territory.

Please feel free to contact Fred Poe at (012) 345–6789 regarding the identification and potential repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony in this collection that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. You are invited to review our records, catalogues, relevant studies or other pertinent data for the purpose of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of these items. We look forward to working together with you.

Sincerely,

Museum Official

Major Museum

Appendix B to Part 10—Sample Notice of Inventory Completion

The following is an example of a Notice of Inventory Completion published in the Federal Register.

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Hancock County, ME, in the Control of the National Park Service.

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given following provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains and associated funerary objects from a site in Hancock County, ME, that are presently in the control of the National Park Service.

A detailed inventory and assessment of these human remains has been made by National Park Service curatorial staff, contracted specialists in physical anthropology and prehistoric archeology, and representatives of the Penobscot Nation, Aroostook Band of Micmac, Houlton Band of Maliseet, and the Passamaquoddy Nation, identified collectively hereafter as the Wabanaki Tribes of Maine.

The partial remains of at least seven individuals (including five adults, one subadult, and one child) were recovered in 1977 from a single grave at the Fernald Point Site (ME Site 43–24), a prehistoric shell midden on Mount Desert Island, within the boundary of Acadia National Park. A bone harpoon head, a modified beaver tooth, and several animal and fish bone fragments were found associated with the eight individuals. Radiocarbon assays indicate the burial site dates between 1035–1155 AD. The human remains and associated funerary objects have been catalogued as ACAD–5747, 5749, 5750, 5751, 5752, 5783, 5784. The partial remains of an eighth individual (an elderly male) was also recovered in 1977 from a second grave at the Fernald Point Site. No associated funerary objects were recovered with this individual. Radiocarbon assays indicate the second burial site dates between 480–680 AD. The human remains have been catalogued as ACAD–5748. The human remains and associated funerary objects of all nine individuals are currently in the possession of the University of Maine, Orono, ME.

Inventory of the human remains and associated funerary objects and review of the accompanying documentation indicates that no known individuals were identifiable. A representative of the Wabanaki Tribes of Maine has identified the Acadia National Park area as a historic gathering place for his people and stated his belief that there exists a relationship of shared group identity between these individuals and the Wabanaki Tribes of Maine. The Prehistoric Subcommittee of the Maine State Historic Preservation Office's Archaeological Advisory Committee has found it reasonable to trace a shared group identity from the Late Prehistoric Period (1000–1500 AD) inhabitants of Maine as an undivided whole to the four modern Indian tribes known collectively as the Wabanaki Tribes of Maine on the basis of geographic proximity; survivals of stone, ceramic and perishable material culture skills; and probable linguistic continuity across the Late Prehistoric/Contact Period boundary. In a 1979 article, Dr. David Sanger, the archeologist who conducted the 1977 excavations at the Fernald Point Site and uncovered the abovementioned burials, recognizes a relationship between Maine sites dating to the Ceramic Period (2,000 B.P.–1600 A.D.) and present-day Algonkian speakers generally known as Abenakis, including the Micmac, Maliseet, Passamaquoddy, Penboscot, Kennebec, and Pennacook groups.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects and the Wabanaki Tribes of Maine.

This notice has been sent to officials of the Wabanaki Tribes of Maine. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Len Bobinchock, Acting Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609, telephone: (207) 288–0374, before August 31, 1994. Repatriation of these human remains and associated funerary objects to the Wabanaki Tribes of Maine may begin after that date if no additional claimants come forward.

Dated: July 21, 1994

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[Published: August 1, 1994]

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–29418 Filed 12–1–95; 8:45 am]

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Federal Register

Monday
December 4, 1995

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 29, et al.

Removal of U.S. Grade Standards and Other Selected Regulations; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 29, 31, 32, 51, 52, 53, 54, 56, 58, 70, and 160

[Docket Number FV–95–303]

Removal of U.S. Grade Standards and Other Selected Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule will remove most of the voluntary U.S. grade standards and other selected regulations covering a number of agricultural commodities (dairy products, tobacco, wool, mohair, fresh and processed fruits and vegetables, livestock, meats and meat products, eggs, and poultry and rabbit products) from the Code of Federal Regulations (CFR). These are an accumulation of regulations which have been developed for more than 75 years to facilitate the marketing of agricultural commodities by providing a uniform language which may be used to describe the quality of various agricultural commodities as valued in the marketplace. The voluntary standards and all subsequent revisions or new standards will be made available in a separate publication, except for wool and mohair standards. These standards and related regulations will be removed from the CFR and will no longer be available since there is no demand for services pertaining to wool or mohair. This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

In carrying out this responsibility, the Administrator of the Agricultural Marketing Service (AMS), will ensure that proposed, new or revised voluntary standards will appear in the ''Notices'' section of the Federal Register and that the public will have an opportunity to comment. AMS will maintain the existing numbering system in the voluntary standards. The standards for the various commodities will continue to be administered by each commodity division within AMS.

EFFECTIVE DATE: December 4, 1995. Comments must be received by February 2, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be submitted in duplicate, signed, include the address of the sender, and should bear reference to the date and page number of this issue of the Federal Register. Commentors are encouraged to include definitive information which explains and supports the sender's views. Written comments may be mailed to Eric Forman, Deputy Director, Fruit and Vegetable Division, USDA, AMS, Room 2085–S, P.O. Box 96456, Washington, DC 20090–6456.

Comments will be available for public inspection during regular business hours in Room 2085–South Building; 14th Street and Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Eric Forman (202) 690–0262.

SUPPLEMENTARY INFORMATION: This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Executive Order 12866

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The Administrator of (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. Although this action will remove provisions from the CFR, small entities should see no changes as the standards will be administered under the direction of the Administrator to ensure public input to their formulation and convenient availability to those who want copies of the standards.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act, the information collection requirements contained in the provisions to be amended have been previously approved by the Office of Management and Budget.

Background

The Secretary of Agriculture is authorized under various statutes to provide Federal grading/certification services and to develop and establish efficient marketing methods and practices of agricultural commodities. The ultimate goal being to facilitate the efficient marketing of agricultural commodities and enable consumers to obtain the quality of products they desire at a reasonable cost. For more than 75 years, AMS has facilitated the marketing of agricultural commodities by developing official U.S. grade standards which provide a uniform language that may be used to describe the characteristics of more than 450 commodities as valued by the marketplace. These standards are widely used in private contracts, government procurement, marketing communication and, for some commodities, consumer information.

Although use of most of the U.S. standards is voluntary, they have through the years been promulgated as regulations and codified in the CFR. Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices have outpaced the revision or issuance of regulations. As a result, industry and the marketplace have been in some instances burdened with outdated trading language. The President's regulatory review initiative has provided the impetus to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers and still reduce the regulatory burden. To meet this initiative, regulations that are currently in the CFR which could be administered under the authority of AMS are being removed from the CFR. With respect to the official grade standards, this includes all the standards except those which are currently in the rulemaking process, incorporated by reference in marketing orders/agreements appearing at 7 CFR Parts 900 through 999, or those used to implement government price support. Those grade standard regulations will continue to appear in the CFR, although the text will also be available as AMS standards along with all other grade standards, except for wool and mohair standards. These standards and related regulations will be removed from the CFR and will no longer be available since there is no demand for services pertaining to wool or mohair.

This rule eliminates selected regulations which encompass approximately 1,200 pages of the CFR

covering: Standards for dairy products; tobacco standards; wool standards; mohair standards; U.S. and consumer standards for fresh fruits, vegetables, nuts and other special products; uniform grade nomenclature; specifications for the classification of damaged or repaired packages of fresh fruits and vegetable; standards for inspection of variables; standards for determination of fill weights; standards for processed fruits and vegetables and related products; livestock, meats, prepared meats and meat products; standards for grades and weight classes for shell eggs; classes, standards and grades for poultry products and rabbit products; and, standards for naval stores.

Separated by Division, the following is an outline of those standards or other regulations being removed from the CFR, those that will remain in the CFR and the reason they are not being removed.

Administered by the Tobacco Division

7 Part 29	Tobacco Inspection
	Standards Being Removed From CFR
CFR Section	**Title**
29.3251–3401	Official Standard Grades for Maryland Broadleaf Tobacco.
29.4251–4391	Official Standard Grades for Pennsylvania Seedleaf Tobacco.
29.4501–4656	Official Standard Grades for Ohio Cigar-Leaf Tobacco.
29.5251–5386	Official Standard Grades for Puerto Rican Cigar-Filler Tobacco.
29.5501–5656	Official Standard Grades for Connecticut Valley Cigar-Binder Tobacco.
29.6001–6161	Official Standard Grades for Wisconsin Cigar-Binder Tobacco.
29.6251–6411	Official Standard Grades for Connecticut Valley Shade-Grown Cigar-Wrapper Tobacco.
29.6501–6661	Official Standard Grades for Georgia and Florida Shade-Grown Cigar-Wrapper Tobacco.
	Standards Being Retained in CFR Because They are Currently Referenced in Government Price Support Programs
29.1001–1225	Official Standard Grades for Flue-Cured Tobacco.
29.2251–2481	Official Standard Grades for Virginia Fire-Cured Tobacco.
29.2501–2696	Official Standard Grades for Kentucky and Tennessee Fire-Cured and Foreign-Grown Fire-Cured Tobacco.
29.3001–3182	Official Standard Grades for Burley Tobacco.
29.3501–3686	Official Standard Grades for Dark Air-Cured Tobacco.
7 CFR 160	Regulations and Standards For Naval Stores.
	Standards Being Removed From CFR
CFR Section	**Title**
160.301–305	Standards Appendix A to Part 160—Standard Specifications for Spirits of Turpentine. Appendix B to Part 160—Colorimetric Specifications for U.S. Rosin Standards (Master Cubes XA, XB, and XC).

Administered by the Livestock and Seed Division

7 Part 31	Wool Standards.
	Standards Being Removed From the CFR
31.0–16	Official Standards of the United States for grades of wool.
31.100–116	Official Standards of the United States for grades of wool top.
31.200–201	Definitions.
31.202–204	Methods for determining Grade of Wool.
31.300–302	Methods for determining grade of wool top.
31.400–402	Samples representative of official grade standards of the United States for wool and wool top.
7 Part 32	Mohair Standards.
32.1	Official Standards of the United States for grades of grease mohair.
32.100	Official Standards of the United States for grades of mohair top.
32.200–201	Definitions.
32.202–205	Methods for determining grade of grease mohair.
32.300–302	Methods for determining grade of mohair top.
32.400–403	Samples representative of official grade standards of the United States for grease mohair.
7 Part 53	Livestock (Grading, Certification, and Standards). Subpart B—Standards.
53.120–124	Vealers and slaughter calves.
53.130–136	Slaughter lambs, yearlings, and sheep.
53.150–159	Swine.
53.208–212	Cattle.
7 Part 54	Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards). Subpart B— Standards.
54.112–117	Veal and calf carcasses.
54.121–127	Lamb, yearling mutton, and mutton carcasses.
54.131–137	Pork carcasses.
	Regulations Being Retained in CFR Because They Provide Operational Regulations.
7 Part 53	Livestock (Grading, Certification, and Standards). Subpart A—Regulations.
53.1–53.2	Definitions.
53.3	Administration.
53.4–17	Service.

53.18–19	Charges for Service.
53.20–21	Miscellaneous.
7 Part 54	Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).
	Subpart A—Regulations.
54.1–2	Definitions.
54.3	Administration.
54.4–18	Service.
54.19–26	Appeal service.
54.27–28	Charges for service.
54.29–31	Miscellaneous.
	Standards Being Temporarily Retained in the CFR Because They Are Currently in Rulemaking
7 Part 53	Livestock (Grading, Certification, and Standards).
	Subpart B—Standards
53.201–206	Cattle
7 Part 54	Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).
	Subpart B—Standards.
54.102–107	Carcass beef.

Administered by the Poultry Division

7 Part 56	Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs
	Standards Being Removed From CFR
CFR Section	**Title**
	Subpart B—(Reserved)
56.200–234	Subpart C—United States Standards, Grades, and Weight Classes for Shell Eggs.
	Regulations Being Retained in CFR Because They Provide Operational Regulations, etc.
56.1–177	Subpart A—Grading of Shell Eggs.
7 Part 70	Voluntary Grading of Poultry Products and Rabbit Products and U.S. Classes, Standards, and Grades.
	Standards Being Removed From CFR
CFR Section	**Title**
70.200–271	Subpart B—United States Classes, Standards, and Grades for Poultry.
70.300–332	Subpart C—United States Classes, Standards, and Grades for Rabbits.
	Regulations Being Retained in CFR Because They Provide Operational Regulations.
70.1–110	Subpart A—Grading of Poultry Products and Rabbit Products.

Administered by the Fresh Products Branch, Fruit and Vegetable Division

7 Part 51	Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards)
	Standards Being Removed From CFR
51.100–299	Subpart—United States Standards for Grades of Fresh Fruits, Vegetables, Nuts and Other Special Products Uniform Grade Nomenclature.
51.300–339	Subpart—United States Standards for Grades of Apples.
51.340–354	Subpart—United States Standards for Grades of Apples for Processing.
51.355–374	Subpart—United States Standards for Fresh Shelled Lima Beans for Processing.
51.375–399	Subpart—United States Standards for Beets.
51.400–424	Subpart—United States Consumer Standards for Italian Sprouting Broccoli.
51.425–449	Subpart—United States Standards for Broccoli for Processing.
51.450–474	Subpart—United States Standards for Cabbage.
51.495–519	Subpart—United States Consumer Standards for Fresh Carrots.
51.520–539	Subpart—United States Standards for Collard Greens or Broccoli Greens.
51.540–559	Subpart—United States Standards for Cauliflower.
51.810–834	Subpart—United States Consumer Standards for Husked Corn on the Cob.
51.835–859	Subpart—United States Standards for Grades of Sweet Corn.
51.860–879	Subpart—United States Standards for Berries for Processing.
51.925–974	Subpart—United States Standards for Grapefruit (California and Arizona).
51.975–999	Subpart—United States Consumer Standards for Fresh Kale.
51.1030–1054	Subpart—United States Standards for Mustard Greens and Turnip Greens.
51.1055–1084	Subpart—United States Standards for Common Green Onions.
51.1085–1139	Subpart—United States Standards for Oranges (California and Arizona).
51.1345–1374	Subpart—United States Standards for Pears for Canning.
51.1375–1399	Subpart—United States Standards for Fresh Peas.
51.1465–1484	Subpart—United States Standards for Sweet Peppers for Processing.
51.1485–1519	Subpart—United States Standards for Grades of Pineapples.
51.1600–1629	Subpart—United States Standards for Grades of Sweetpotatoes.
51.1630–1659	Subpart—United States Standards for Shallots (Bunched).
51.1660–1684	Subpart—United States Standards for Sweetpotatoes for Canning or Freezing.
51.1685–1709	Subpart—United States Standards for Sweetpotatoes for Dicing or Pulping.
51.1710–1729	Subpart—United States Standards for Raspberries for Processing.
51.1730–1749	Subpart—United States Standards for Spinach Leaves (Fresh).
51.1750–1769	Subpart—United States Consumer Standards for Fresh Spinach Leaves.
51.1770–1809	Subpart—United States Standards for Tangerines.

51.1930–1949	Subpart—United States Standards for Green Tomatoes for Processing.
51.1950–1969	Subpart—United States Standards for Currants for Processing.
51.1970–1994	Subpart—United States Standards for Grades of Watermelons.
51.2025–2049	Subpart—United States Standards for Blueberries for Processing.
51.2050–2074	Subpart—United States Consumer Standards for Brussels Sprouts.
51.2150–2189	Subpart—United States Standards for Grades of Grapes for Processing and Freezing.
51.2190–2219	Subpart—United States Standards for Eggplant.
51.2220–2249	Subpart—United States Standards for Cucumbers.
51.2250–2274	Subpart—United States Standards for Brussels Sprouts.
51.2310–2334	Subpart—United States Consumer Standards for Fresh Parsnips.
51.2360–2394	Subpart—United States Standards for Grades of Topped Carrots.
51.2395–2424	Subpart—United States Standards for Grades of Radishes.
51.2425–2454	Subpart—United States Consumer Standards for Fresh Turnips.
51.2455–2484	Subpart—United States Standards for Bunched Carrots.
51.2485–2509	Subpart—United States Standards for Carrots With Short Trimmed Tops.
51.2510–2539	Subpart—United States Standards for Grades of Lettuce.
51.2585–2609	Subpart—United States Standards for Dandelion Greens.
51.2610–2645	Subpart—United States Standards for Turnips or Rutabagas.
51.2670–2695	Subpart—United States Standards for Southern Peas.
51.2696–2709	Subpart—United States Standards for Spinach for Processing.
51.2775–2794	Subpart—United States Consumer Standards for Fresh Cranberries.
51.2795–2829	Subpart—United States Standards for Grades of Lemons.
51.2860–2879	Subpart—United States Standards for Beet Greens.
51.2880–2890	Subpart—United States Standards for Spinach Plants.
51.2891–2899	Subpart—United States Standards for Grades of Bunched Spinach.
51.2900–2924	Subpart—United States Standards for Grades of Sweet Anise.
51.2976–2999	Subpart—United States Standards for Italian Type Tomatoes for Canning.
51.3000–3029	Subpart—United States Standards for Seed Potatoes.
51.3030–3049	Subpart—United States Standards for Fresh Cranberries for Processing.
51.3085–3114	Subpart—United States Standards for Grades of Christmas Trees.
51.3115–3144	Subpart—United States Standards for Grades of Strawberries.
51.3170–3194	Subpart—United States Consumer Standards for Beet Greens.
51.3220–3239	Subpart—United States Standards for Cauliflower for Processing.
51.3240–3269	Subpart—United States Standards for Snap Beans for Processing.
51.3270–3294	Subpart—United States Standards for Sweet Peppers.
51.3295–3309	Subpart—United States Standards for Grades of Romaine.
51.3310–3344	Subpart—United States Standards for Grade Evaluation of Tomatoes for Processing.
51.3345–3364	Subpart—United States Standards for Grades of Greenhouse Tomatoes.
51.3365–3384	Subpart—United States Standards for Grades of Sweet Corn for Processing.
51.3385–3409	Subpart—United States Standards for Grades of Mushrooms.
51.3435–3454	Subpart—United States Standards for Grades of Mushrooms for Processing.
51.3455–3474	Subpart—United States Standards for Grades of Greenhouse Leaf Lettuce.
51.3475–3499	Subpart—United States Standards for Grades of Blueberries.
51.3500–3519	Subpart—United States Standards for Grades of Brazil Nuts in the Shell.
51.3520–3534	Subpart—United States Standards for Grades of Mixed Nuts in the Shell.
51.3535–3554	Subpart—United States Standards for Grades of Endive, Escarole, or Chicory.
51.3555–3584	Subpart—United States Standards for Grades of Bunched Italian Sprouting Broccoli.
51.3585–3609	Subpart—United States Standards for Grades of Southern Peas for Processing.
51.3610–3634	Subpart—United States Standards for Grades of American (Eastern Type) Bunch Grapes.
51.3635–3664	Subpart—United States Standards for Grades of Okra for Processing.
51.3665–3694	Subpart—United States Standards for Grades of Rhubarb (Field-Grown).
51.3695–3719	Subpart—United States Standards for Grades of Fresh Freestone Peaches for Canning, Freezing, or Pulping.
51.3720–3739	Subpart—United States Standards for Grades of Fresh Asparagus.
51.3785–3804	Subpart—United States Standards for Grades of Globe Artichokes.
51.3805–3828	Subpart—United States Standards for Grades of Lima Beans.
51.3829–3854	Subpart—United States Standards for Grades of Snap Beans.
51.3855–3879	Subpart—United States Standards for Grades of Greenhouse Cucumbers.
51.3880–3899	Subpart—United States Standards for Grades of Garlic.
51.3900–3929	Subpart—United States Standards for Grades of Horseradish Roots.
51.3930–3944	Subpart—United States Standards for Grades of Kale.
51.3945–3954	Subpart—United States Standards for Grades of Okra.
51.3955–3979	Subpart—United States Standards for Grades of Creole Onions.
51.3980–3999	Subpart—United States Standards for Grades of Onion Sets.
51.4000–4009	Subpart—United States Standards for Grades of Parsley.
51.4010–4029	Subpart—United States Standards for Grades of Parsnips.
51.4030–4049	Subpart—United States Standards for Grades of Fall and Winter Type Squash and Pumpkin.
51.4050–4074	Subpart—United States Standards for Grades of Summer Squash.
51.4075–4094	Subpart—United States Standards for Grades of Green Asparagus for Processing.
51.4095–4119	Subpart—United States Standards for Grades of Beets for Processing.
51.4120–4139	Subpart—United States Standards for Grades of Cabbage for Processing.
51.4140–4169	Subpart—United States Standards for Grades of Carrots for Processing.
51.4170–4189	Subpart—United States Standards for Grades of Cucumbers for Pickling.
51.4190–4209	Subpart—United States Standards for Grades of Onions for Processing.
51.4210–4239	Subpart—United States Standards for Grades of Fresh Shelled Peas for Canning or Freezing.
51.4240–4269	Subpart—United States Standards for Grades of Gladiolus Corms (Bulbs).
51.4270–4289	Subpart—United States Standards for Grades of Dewberries and Blackberries.

51.4290–4319	Subpart—United States Standards for Grades of Juice Grapes (European or Vinifera Type).
51.4320–4339	Subpart—United States Standards for Grades of Raspberries.
51.4340–4359	Subpart—United States Standards for Grades of Red Sour Cherries for Manufacture.
51.4360–4379	Subpart—United States Standards for Grades of Sweet Cherries for Canning or Freezing.
51.4380–4399	Subpart—United States Standards for Grades of Sweet Cherries, for Export for Sulphur Brining.
51.4400–4414	Subpart—United States Standards for Grades of American (Eastern Type) Bunch Grapes for Processing and Freezing.
51.4415–4434	Subpart—United States Standards for Grades of Growers' Stock Strawberries for Manufacture.
51.4435–4454	Subpart—United States Standards for Grades of Washed and Sorted Strawberries for Freezing.
51.4455–4474	Subpart—United States Standards for Grades of Asparagus Plumosus.
51.4475–4504	Subpart—United States Standards for Grades of Cut Peonies in the Bud.
51.4505–4574	Subpart—United States Standards for Grades of Tomato Plants.
51.4575–5999	Subpart—United States Standards for Grades of Potatoes for Chipping
	Other Regulations Being Removed.
51.6000–6005	Subpart—United States Specifications for the Classification of Damaged or Repaired Packages of Fresh Fruits and Vegetables.
	Regulations Being Retained in CFR Because They Provide Operational Regulations.
51.1–99	Subpart-Regulations.
	Standards Being Retained in CFR Because They are Currently Referenced in Marketing Orders/Agreements
51.475–494	Subpart—United States Standards for Grades of Cantaloups.
51.560–594	Subpart—United States Standards for Celery.
51.595–619	Subpart—United States Consumer Standards for Celery Stalks.
51.620–679	Subpart—United States Standards for Grades of Grapefruit (Texas and States Other Than Florida, California, and Arizona).
51.680–749	Subpart—United States Standards for Grades of Oranges (Texas and States Other Than Florida, California, and Arizona).
51.750–809	Subpart—United States Standards for Grades of Florida Grapefruit.
51.880–924	Subpart—U.S. Standards for Grades of Table Grapes (European or ViniferaType).
51.1000–1029	Subpart—United States Standards for Persian (Tahiti) Limes.
51.1140–1209	Subpart—United States Standards for Grades of Florida Oranges and Tangelos.
51.1210–1234	Subpart—United States Standards for Peaches.
51.1260–1299	Subpart—United States Standards for Summer and Fall Pears.
51.1300–1344	Subpart—United States Standards for Winter Pears.
51.1400–1429	Subpart—United States Standards for Grades of Pecans in the Shell.
51.1430–1464	Subpart—United States Standards for Grades of Shelled Pecans.
51.1520–1539	Subpart—United States Standards for Grades of Fresh Plums and Prunes.
51.1540–1574	Subpart—United States Standards for Grades of Potatoes.
51.1575–1599	Subpart—United States Consumer Standards for Potatoes.
51.1810–1854	Subpart—United States Standards for Grades of Florida Tangerines.
51.1855–1899	Subpart—United States Standards for Fresh Tomatoes.
51.1900–1929	Subpart—United States Consumer Standards for Fresh Tomatoes.
51.1995–2024	Subpart—United States Standards for Grades of Filberts in the Shell.
51.2075–2104	Subpart—United States Standards for Grades of Almonds in the Shell.
51.2105–2149	Subpart—United States Standards for Grades of Shelled Almonds.
51.2275–2309	Subpart—United States Standards for Shelled English Walnuts (Juglans Regia).
51.2335–2359	Subpart—United States Standards for Grades of Kiwifruit.
51.2540–2554	Subpart—United States Standards for Grades of Pistachio Nuts in the Shell.
51.2555–2584	Subpart—United States Standards for Grades of Shelled Pistachio Nuts.
51.2646–2669	Subpart—United States Standards for Grades for Sweet Cherries.
51.2830–2859	Subpart—United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types).
51.2925–2944	Subpart—United States Standards for Apricots.
51.2945–2975	Subpart—United States Standards for Grades of Walnuts in the Shell.
51.3050–3084	Subpart—United States Standards for Florida Avocados.
51.3145–3169	Subpart—United States Standards for Grades of Nectarines.
51.3195–3219	Subpart—United States Standards for Bermuda-Granex-Grano Type Onions.
51.3410–3434	Subpart—United States Standards for Grades of Potatoes for Processing.
51.3740–3784	Subpart—United States Standards for Grades of Honey Dew and Honey Ball Type Melons.
	Standards Being Retained in CFR Because They are Currently Referenced in Government Price Support Programs
51.1235–1259	Subpart—United States Standards for Cleaned Virginia Type Peanuts in the Shell.
51.2710–2729	Subpart—United States Standards for Shelled Runner Type Peanuts.
51.2730–2749	Subpart—United States Standards for Grades of Shelled Spanish Type Peanuts.
51.2750–2774	Subpart—United States Standards for Shelled Virginia Type Peanuts.

Administered by the Processed Products Branch, Fruit and Vegetable Division

7 Part 52	Processed Fruits and Vegetables, Processed Products thereof, and Certain Other Processed Food Products.
	Standards Being Removed From CFR
CFR Section	**Title**
52.201–220	Subpart—United States Standards for Inspection by Variables.
52.221–300	Subpart—United States Standards for Determination of Fill Weights (and Attachments).
52.301–330	Subpart—United States Standards for Grades of Canned Apple Juice.
52.331–360	Subpart—United States Standards for Grades of Canned Applesauce.
52.361–380	Subpart—United States Standards for Grades of Frozen Apples.
52.381–410	Subpart—United States Standards for Grades of Frozen Asparagus.
52.411–440	Subpart—United States Standards for Grades of Canned Dried Beans.

52.441–470	Subpart—United States Standards for Grades of Canned Green Beans and Canned Wax Beans.
52.471–500	Subpart—United States Standards for Grades of Canned Lima Beans.
52.501–520	Subpart—United States Standards for Grades of Frozen Lima Beans.
52.521–550	Subpart—United States Standards for Grades of Canned Beets.
52.551–580	Subpart—United States Standards for Grades of Canned Blackberries, and Other Similar Berries such as Boysenberries, Dewberries, and Loganberries.
52.581–610	Subpart—United States Standards for Grades of Canned Blueberries.
52.611–630	Subpart—United States Standards for Grades of Frozen Blueberries.
52.631–650	Subpart—United States Standards for Grades of Frozen Broccoli.
52.651–670	Subpart—United States Standards for Grades of Frozen Brussels Sprouts.
52.671–700	Subpart—United States Standards for Grades of Canned Carrots.
52.701–720	Subpart—United States Standards for Grades of Frozen Carrots.
52.741–770	Subpart—United States Standards for Grades of Sulfured Cherries.
52.821–850	Subpart—United States Standards for Grades of Canned Sweet Cherries.
52.851–880	Subpart—United States Standards for Grades of Canned Cream Style Corn.
52.881–910	Subpart—United States Standards for Grades of Canned Whole Kernel (or Whole Grain) Corn.
52.911–930	Subpart—United States Standards for Grades of Frozen Whole Kernel (or Whole Grain) Corn.
52.931–950	Subpart—United States Standards for Grades of Frozen Corn-on-the-Cob.
52.951–1000	Subpart—United States Standards for Grades of Canned Cranberry Sauce.
52.1021–1050	Subpart—United States Standards for Grades of Dried Figs.
52.1051–1080	Subpart—United States Standards for Grades of Canned Fruit Cocktail.
52.1081–1110	Subpart—United States Standards for Grades of Fruit Jelly.
52.1111–1140	Subpart—United States Standards for Grades of Fruit Preserves (or Jams).
52.1141–1170	Subpart—United States Standards for Grades of Canned Grapefruit.
52.1171–1220	Subpart—United States Standards for Grades of Frozen Grapefruit.
52.1221–1250	Subpart—United States Standards for Grades of Grapefruit Juice.
52.1251–1280	Subpart—United States Standards for Grades of Canned Grapefruit and Orange for Salad.
52.1281–1310	Subpart—United States Standards for Grades of Grapefruit Juice and Orange Juice (or Orange Juice and Grapefruit Juice).
52.1311–1340	Subpart—United States Standards for Grades of Frozen Concentrated Blended Grapefruit Juice and Orange Juice.
52.1341–1370	Subpart—United States Standards for Grades of Canned Grape Juice.
52.1371–1390	Subpart—United States Standards for Grades of Frozen Leafy Greens.
52.1391–1420	Subpart—United States Standards for Grades of Extracted Honey.
52.1421–1450	Subpart—United States Standards for Grades of Frozen Concentrate for Lemonade.
52.1451–1480	Subpart—United States Standards for Grades of Orange Marmalade.
52.1481–1510	Subpart—United States Standards for Grades of Canned Mushrooms.
52.1531–1550	Subpart—United States Standards for Grades of Olive Oil.
52.1551–1610	Subpart—United States Standards for Grades of Orange Juice.
52.1611–1640	Subpart—United States Standards for Grades of Canned Pears.
52.1641–1660	Subpart—United States Standards for Grades of Canned Field Peas and Canned Black-eye Peas.
52.1681–1710	Subpart—United States Standards for Grades of Pickles.
52.1711–1740	Subpart—United States Standards for Grades of Canned Pineapple.
52.1741–1760	Subpart—United States Standards for Grades of Frozen Pineapple.
52.1761–1780	Subpart—United States Standards for Grades of Canned Pineapple Juice.
52.1781–1810	Subpart—United States Standards for Grades of Canned Plums.
52.1811–1840	Subpart—United States Standards for Grades of Canned White Potatoes.
52.1871–1900	Subpart—United States Standards for Grades of Frozen Raspberries.
52.1901–1940	Subpart—United States Standards for Grades of Canned Spinach.
[Reserved]	Subpart—United States Standards for Grades of Frozen Spinach.
52.1941–1960	Subpart—United States Standards for Grades of Frozen Cooked Squash.
52.1961–1980	Subpart—United States Standards for Grades of Frozen Squash (Summer Type).
52.1981–2010	Subpart—United States Standards for Grades of Frozen Strawberries.
52.2011–2040	Subpart—United States Standards for Grades of Frozen Succotash.
52.2041–2070	Subpart—United States Standards for Grades of Canned Sweetpotatoes.
52.2071–2100	Subpart—United States Standards for Grades of Canned Tangerine Juice.
52.2101–2130	Subpart—United States Standards for Grades of Tomato Catsup.
52.2131–2160	Subpart—United States Standards for Grades of Frozen Mixed Vegetables.
52.2161–2190	Subpart—United States Standards for Grades of Canned Apples.
52.2191–2280	Subpart—United States Standards for Grades of Chili Sauce.
52.2281–2320	Subpart—United States Standards for Grades of Canned Peas.
52.2341–2370	Subpart—United States Standards for Grades of Dehydrated (Low Moisture) Apples.
52.2371–2390	Subpart—United States Standards for Grades of Tomato Sauce.
52.2391–2420	Subpart—United States Standards for Grades of Frozen French Fried Potatoes.
52.2421–2450	Subpart—United States Standards for Grades of Peeled Potatoes.
52.2451–2480	Subpart—United States Standards for Grades of Frozen Concentrated Sweetened Grape Juice.
52.2481–2500	Subpart—United States Standards for Grades of Dried Apples.
52.2501–2520	Subpart—United States Standards for Grades of Frozen Peas and Carrots.
52.2521–2540	Subpart—United States Standards for Grades of Frozen Concentrate of Limeade.
52.2541–2560	Subpart—United States Standards for Grades of Canned Asparagus.
52.2561–2600	Subpart—United States Standards for Grades of Canned Clingstone Peaches.
52.2601–2640	Subpart—United States Standards for Grades of Canned Freestone Peaches.
52.2641–2680	Subpart—United States Standards for Grades of Canned and Canned Solid-Pack Apricots.
52.2681–2740	Subpart—United States Standards for Grades of Canned Pimentos.
52.2741–2800	Subpart—United States Standards for Grades of Canned Pumpkin and Canned Squash.
52.2801–2820	Subpart—United States Standards for Grades of Apple Butter.
52.2821–2860	Subpart—United States Standards for Grades of Canned Kadota Figs.
52.2861–2910	Subpart—United States Standards for Grades of Comb Honey.

52.2911–2930	Subpart—United States Standards for Grades of Frozen Plums.
52.2931–2950	Subpart—United States Standards for Grades of Concentrated Tangerine Juice for Manufacturing.
52.2951–3000	Subpart—United States Standards for Grades of Canned Sauerkraut.
52.3001–3040	Subpart—United States Standards for Grades of Frozen Sweet Peppers.
52.3041–3060	Subpart—United States Standards for Grades of Canned Onions.
52.3061–3100	Subpart—United States Standards for Grades of Peanut Butter.
52.3101–3160	Subpart—United States Standards for Grades of Sugarcane Sirup.
52.3161–3180	Subpart—United States Standards for Grades of Frozen Sweet Cherries.
52.3231–3280	Subpart—United States Standards for Grades of Dehydrated Low-Moisture Prunes.
52.3281–3310	Subpart—United States Standards for Grades of Canned Hominy.
52.3311–3330	Subpart—United States Standards for Grades of Canned Raspberries.
52.3331–3420	Subpart—United States Standards for Grades of Canned Okra.
52.3421–3450	Subpart—United States Standards for Grades of Canned Tomatoes and Okra and Canned Okra and Tomatoes.
52.3451–3510	Subpart—United States Standards for Grades of Bulk Sauerkraut.
52.3511–3550	Subpart—United States Standards for Grades of Frozen Peas.
52.3551–3580	Subpart—United States Standards for Grades of Frozen Peaches.
52.3581–3620	Subpart—United States Standards for Grades of Canned Squash (Summer Type).
52.3621–3650	Subpart—United States Standards for Grades of Tomato Juice.
52.3651–3730	Subpart—United States Standards for Grades of Sugarcane Molasses.
52.3731–3750	Subpart—United States Standards for Grades of Frozen Turnip Greens with Turnips.
52.3831–3870	Subpart—United States Standards for Grades of Canned Fruits for Salads.
52.3871–3910	Subpart—United States Standards for Grades of Dehydrated, Low-Moisture Apricots.
52.3911–3950	Subpart—United States Standards for Grades of Dehydrated, Low-Moisture Peaches.
52.3951–4020	Subpart—United States Standards for Grades of Concentrated Lemon Juice for Manufacturing.
52.4021–4060	Subpart—United States Standards for Grades of Canned Grapes.
52.4061–5000	Subpart—United States Standards for Grades of Frozen Breaded Onion Rings.
52.5001–5040	Subpart—United States Standards for Grades of Frozen Sweetpotatoes.
52.5041–5080	Subpart—United States Standards for Grades of Tomato Paste.
52.5081–5160	Subpart—United States Standards for Grades of Canned Tomato Puree (Tomato Pulp).
52.5161–5200	Subpart—United States Standards for Grades of Canned Tomatoes.
52.5201–5240	Subpart—United States Standards for Grades of Concentrated Tomato Juice.
52.5241–5360	Subpart—United States Standards for Grades of Frozen Speckled Butter (Lima) Beans.
52.5361–5440	Subpart—United States Standards for Grades of Frozen Melon Balls.
52.5441–5480	Subpart—United States Standards for Grades of Green Olives.
52.5481–5520	Subpart—United States Standards for Grades of Canned Lemon Juice.
52.5521–5600	Subpart—United States Standards for Grades of Frozen Apricots.
52.5601–5760	Subpart—United States Standards for Grades of Canned Dried Prunes.
52.5761–5800	Subpart—United States Standards for Grades of Dried Apricots.
52.5801–5840	Subpart—United States Standards for Grades of Dried Peaches.
52.5841–5880	Subpart—United States Standards for Grades of Dried Pears.
52.5881–5960	Subpart—United States Standards for Grades of Frozen Berries.
52.5961–6000	Subpart—United States Standards for Grades of Table Maple Sirup.
52.6001–6040	Subpart—United States Standards for Grades of Canned Succotash.
52.6041–6080	Subpart—United States Standards for Grades of Refiner's Sirup.
52.6081–6200	Subpart—United States Standards for Grades of Canned Leafy Greens.
52.6201–6240	Subpart—United States Standards for Grades of Canned Peas and Carrots.
52.6241–6280	Subpart—United States Standards for Grades of Canned Solid-Pack Apricots.
52.6281–6320	Subpart—United States Standards for Grades of Frozen Cranberries.
52.6321–6400	Subpart—United States Standards for Grades of Frozen Concentrated Apple Juice.
52.6401–6440	Subpart—United States Standards for Grades of Frozen Hash Brown Potatoes.
52.6441–6460	Subpart—United States Standards for Grades of Canned Pork and Beans.
52.6461–6570	Subpart—United States Standards for Grades of Canned Baked Beans.
52.6571–6582	Subpart—United States Standards for Grades of Canned Celery.
	Regulations Being Retained in CFR Because They Provide Operational Regulations.
52.1–200	Subpart—Regulations Governing Inspection and Certification.
	Standards Being Temporarily Retained in CFR Because They are Currently in Rulemaking.
52.721–729	Subpart—United States Standards for Grades of Frozen Cauliflower.
52.1511–1520	Subpart—United States Standards for Grades of Frozen Okra.
52.1661–1674	Subpart—United States Standards for Grades of Frozen Field Peas and Frozen Black-eye Peas.
52.2321–2334	Subpart—United States Standards for Grades of Frozen Green Beans and Frozen Wax Beans.
	Standards Being Retained in CFR Because They are Currently Referenced in Marketing Orders/Agreements
52.771–784	Subpart—United States Standards for Grades of Canned Red Tart Pitted Cherries.
52.801–812	Subpart—United States Standards for Grades of Frozen Red Tart Pitted Cherries.
52.1001–1011	Subpart—United States Standards for Grades of Dates.
52.1841–1858	Subpart—United States Standards for Grades of Processed Raisins.
52.3181–3188	Subpart—United States Standards for Grades of Dried Prunes.
52.3751–3830	Subpart—United States Standards for Grades of Canned Ripe Olives.
	Administered by the Dairy Division
7 Part 58	Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products.
	Standards Being Removed From CFR
CFR Section	**Title**

Sta

58.2425–2454	Subpart G—United States Standards for Grades of Whipped Butter.
58.2455–2464	Subpart H—United States Standards for Grades of Bulk American Cheese.
58.2475–2500	Subpart J—United States Standards for Grades of Colby Cheese.
58.2501–2524	Subpart K—United States Standards for Grades of Cheddar Cheese.
58.2550–2569	Subpart M—United States Standards for Grades of Nonfat Dry Milk (Roller Process).
58.2570–2600	Subpart N—United States Standards for Grades of Swiss Cheese, Emmentaler Cheese.
58.2601–2620	Subpart O—United States Standards for Dry Whey.
58.2621–2650	Subpart P—United States Standards for Grades of Butter.
58.2651–2675	Subpart Q—United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product.
58.2676–2700	Subpart R—United States Scorched Particle Standards for Dry Milks.
58.2701–2725	Subpart S—United States Standards for Grades of Dry Whole Milk.
58.2726–2749	Subpart T—United States Sediment Standards for Milk and Milk Products.
58.2800–2824	Subpart V—United States Standards for Grades of Edible Dry Casein (Acid).
	Regulations Being Retained in CFR Because They Provide Operational Requirements
58.1–99	Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products.
58.100–2424	Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service.
	Standards Being Temporarily Retained in CFR Because They are Currently in Rulemaking
58.2465–2474	Subpart I—United States Standards for Grades of Monterey (Monterey Jack) Cheese.
58.2525–2549	Subpart L—United States Standards for Grades of Nonfat Dry Milk (Spray Process).
58.2750–2799	Subpart U—United States Standards for Instant Nonfat Dry Milk.
	Regulations Being Retained in CFR in Accordance With the Agricultural Marketing Act.
58.2825–2827	Subpart W—United States Department of Agriculture Standard for Ice Cream.

To ensure that standards will be developed, issued, and revised in accordance with procedures that continue to ensure a fair and open process, all new and proposed revisions to existing AMS standards will be published in the Federal Register as a ''Notice'' with adequate time for public comment. A final version of the standards will also be published in the Federal Register as a notice (in addition to continuing to be made available by AMS).

In developing or revising existing grade standards, the Administrator must first determine that a new or revised standard is needed to facilitate trade in a particular commodity. Second, because use of the standards is voluntary, there must be demonstrated interest and support from the affected industry or other interested parties. And third, the standards must be practical to use.

Initial requests for development or revision of a standard may come from the industry, trade or consumer groups, State departments of agriculture, the U.S. Department of Agriculture, or others. Once a request has been received, AMS will coordinate procedures to gather information needed to move forward with the new or revised standard. After this process is completed, a notice of proposed standards change will be published in the Federal Register to solicit comment from any interested parties (normally 30 to 60 days). After evaluating the comments received from interested parties, AMS will determine whether to proceed, develop a new proposal, or terminate the process. The public will be informed through a press release and a notice in the Federal Register.

In addition to publication in the Federal Register, the AMS commodity program that handles the commodity will distribute copies of each standard on request as a pamphlet or other means under the direction of the Administrator of AMS.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The standards are voluntary; (2) No changes are being made to the standards by this docket; (3) New procedures have been drafted for developing new and revising existing U.S. standards which will provide an improved form of delivery standards for those who use U.S. standards to trade; and (4) This is in-line with the President's regulatory review initiative.

List of Subjects

7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 31

Wool.

7 CFR Part 32

Mohair.

7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

7 CFR Part 53

Cattle, Hogs, Livestock, Sheep.

7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

7 CFR Part 160

Administrative practice and procedure, Advertising, Forests and forest products, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR chapter I is amended as follows:

PART 29—TOBACCO INSPECTION

1. The authority citation for 7 CFR Part 29 is revised to read as follows:

Authority: 7 U.S.C. 511b, 511r.

§§ 29.3251–29.3401, 29.4251–29.6661 [Removed]

2. In part 29, Subpart C—Standards, §§ 29.3251 through 29.3401 and §§ 29.4251 through 29.6661 and their undesignated centerheadings are removed.

PART 31—WOOL STANDARDS

3. Under the authority of 7 U.S.C. 415c, 1621–1627, Part 31 is removed.

PART 32—MOHAIR STANDARDS

4. Under the authority of 7 U.S.C. 415c, 1621–1627, Part 32 is removed.

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS [1, 2] (INSPECTION, CERTIFICATION, AND STANDARDS)

5. The authority citation for 7 CFR Part 51 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

§§ 51.100–51.464, 51.495–51.556, 51.810–51.869, 51.952–51.986, 51.1030–51.1109, 51.1345–51.1387, 51.1465–51.1510, 51.1600–51.1793, 51.1930–51.1987, 51.2025–51.2062, 51.2150–51.2262, 51.2310–51.2322, 51.2360–51.2534, 51.2585–51.2630, 51.2670–51.2701 51.2775–51.2821, 51.2860–51.2908, 51.2976–51.3037, 51.3085–51.3124, 51.3170–51.3183, 51.3220–51.3398, 51.3435–51.3734, 51.3785–51.6005 [Removed]

6. In part 51, §§ 51.100 through 51.464, §§ 51.495 through 51.556, §§ 51.810 through 51.869, §§ 51.925 through 51.986, §§ 51.1030 through 51.1109, §§ 51.1345 through 51.1387, §§ 51.1465 through 51.1510, §§ 51.1600 through 51.1793, §§ 51.1930 through 51.1987, §§ 51.2025 through 51.2062, §§ 51.2150 through 51.2262, §§ 51.2310 through 51.2322, §§ 51.2360 through 51.2534, §§ 51.2585 through 51.2630, §§ 51.2670 through 51.2701, §§ 51.2775 through 51.2821, §§ 51.2860 through 51.2908, §§ 51.2976 through 51.3037, §§ 51.3085 through 51.3124, §§ 51.3170 through 51.3183, §§ 51.3220 through 51.3398, §§ 51.3435 through 51.3734, and §§ 51.3785 through 51.6005 and all their undesignated centerheadings and the subpart headings are removed.

[1] Among such other products are the following: Raw nuts, Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

[2] None of the requirements in the regulations of this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to products covered in the regulations in this part.

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS [3]

7. The authority citation for 7 CFR Part 52 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

§§ 52.201–52.711, 52.741–52.755, 52.821–52.963, 52.1021–52.1495, 52.1531–52.1651, 52.1681–52.1821, 52.1871–52.2294, 52.2341–52.3172, 52.3231–52.3743, 52.3831–52.6582 [Removed]

8. In part 52, §§ 52.201 through 52.711, §§ 52.741 through 52.755, §§ 52.821 through 52.963, §§ 52.1021 through 52.1495, §§ 52.1531 through 52.1651, §§ 52.1681 through 52.1821, §§ 52.1871 through 52.2294, §§ 52.2341 through 52.3172, §§ 52.3231 through 52.3743, and §§ 52.3831 through 52.6582 and all their undesignated centerheadings and the subpart headings are removed.

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

9. The authority citation for 7 CFR Part 53 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

§§ 53.120–53.159, 53.208–53.212 [Removed]

10. In part 53, Subpart B—Standards, §§ 53.120 through 53.159, and §§ 53.208 through 53.212 and their undesignated centerheadings are removed.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

11. The authority citation for 7 CFR Part 54 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

§§ 54.112–54.137 [Removed]

12. In part 54, Subpart B—Standards, §§ 54.112 through 54.137 and their undesignated centerheadings are removed.

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

13. The authority citation for 7 CFR Part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

[3] Among such other processed food products are the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea; cocoa; coffee; spices; condiments.

§§ 56.200–56.234 [Removed]

14. In part 56, Subpart B—(Reserved) and Subpart C—United States Standards, Grades, and Weight Classes for Shell Eggs, §§ 56.200 through 56.234 and their undesignated centerheadings are removed.

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS [1]

15. The authority citation for 7 CFR Part 58 is revised to read as follows:

Authority: 7 U.S.C. 1621—1627.

§§ 58.2425–58.2435 [Removed and reserved]

16. In part 58, Subpart G—United States Standards for Grades of Whipped Butter (§§ 58.2425 through 58.2435) is removed and reserved.

§§ 58.2455–58.246 [Removed and reserved]

17. In part 58, Subpart H—United States Standards for Grades of Bulk American Cheese (§§ 58.2455 through 58.2463) is removed and reserved.

§§ 58.2475–58.248 [Removed and reserved]

18. In part 58, Subpart J—United States Standards for Grades of Colby Cheese (§§ 58.2475 through 58.2481) is removed and reserved.

§§ 58.2501–58.250 [Removed and reserved]

19. In part 58, Subpart K—United States Standards for Grades of Cheddar Cheese (§§ 58.2501 through 58.2506) is removed and reserved.

§§ 58.2550–58.2562 [Removed and reserved]

20. In part 58, Subpart M—United States Standards for Grades of Nonfat Dry Milk (Roller Process) (§§ 58.2550 through 58.2562) is removed and reserved.

§§ 58.2570–58.2578 [Removed and reserved]

21. In part 58, Subpart N—United States Standards for Grades of Swiss Cheese, Emmentataler Cheese (§§ 58.2570 through 58.2578) is removed and reserved.

§§ 58.2601–58.2611 [Removed and reserved]

22. In part 58, Subpart O—United States Standards for Dry Whey (§§ 58.2601 through 58.2611) is removed and reserved.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

§§ 58.2621–58.2635 [Removed and reserved]

23. In part 58, Subpart P—United States Standards for Grades of Butter (§§ 58.2621 through 58.2635) is removed and reserved.

§§ 58.2651–58.2657 [Removed and reserved]

24. In part 58, Subpart Q—United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product (§§ 58.2651 through 58.2657) is removed and reserved.

§§ 58.2676–58.2678 [Removed and reserved]

25. In part 58, Subpart R—United States Scorched Particle Standards for Dry Milks (§§ 58.2676 through 58.2678) is removed and reserved.

§§ 58.2701–58.2710 [Removed and reserved]

26. In part 58, Subpart S—United States Standards for Grades of Dry Whole Milk (§§ 58.2701 through 58.2710) is removed and reserved.

§§ 58.2726–58.2732 [Removed and reserved]

27. In part 58, Subpart T—United States Sediment Standards for Milk and Milk Products (§§ 58.2726 through 58.2732) is removed and reserved.

§§ 58.2800–58.2808 [Removed and reserved]

28. In part 58, Subpart V—United States Standards for Grades of Edible Dry Casein (Acid) (§§ 58.2800 through 58.2808) is removed and reserved.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

29. The authority citation for 7 CFR Part 70 continues to read as follows:

Authority: 7 U.S.C. 1621—1627.

§§ 70.200–70.332 [Removed and reserved]

30. In part 70, Subpart B—United States Classes, Standards, and Grades for Poultry and Subpart C—United States Classes, Standards and Grades for Rabbits, §§ 70.200 through 70.332, their undesignated centerheadings and the subpart headings are removed and reserved.

PART 160—REGULATIONS AND STANDARDS FOR NAVAL STORES

31. The authority citation for 7 CFR Part 160 is revised to read as follows:

Authority: 7 U.S.C. 94, 1624.

§§ 160.301–160.305 [Removed]

32. In part 160, §§ 160.301 through 160.305 and their undesignated centerheadings and Appendixes A and B are removed.

Dated: November 27, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–29462 Filed 12–1–95; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Monday
December 4, 1995

Part IV

The President

Federal Register
Vol. 60, No. 232
Monday, December 4, 1995

Presidential Documents

Title 3—

The President

Proclamation 6853 of November 30, 1995

National Drunk and Drugged Driving Prevention Month, 1995

By the President of the United States of America

A Proclamation

For many young Americans, learning to drive is a significant step along the road to maturity and independence. There are serious responsibilities that accompany getting a driver's license, and it is essential to teach our youth—and all Americans—the terrible risks of drunk and drugged driving. Males aged 21-34 are among those most likely to drive under the influence of alcohol or drugs, and there is a critical need for additional prevention efforts aimed at this group.

Alcohol use played a role in 16,600 motor vehicle-related fatalities last year—nearly 41 percent of all such deaths. While the number of these tragedies has declined significantly over the past decade, the statistics are still devastating. We must continue our campaign of public education, provide increased law enforcement, and seek tougher laws and penalties for offenders.

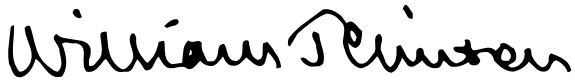
Last June, I called on the Congress to make ''Zero Tolerance'' the law of the land and require States to adopt a Zero Tolerance standard for drivers under the age of 21. I am pleased that this provision was included in the ''National Highway System Designation Act of 1995,'' which I signed this week. It is already against the law for young people to consume alcohol, and Zero Tolerance creates a national standard that will make it effectively illegal for young people who have been drinking to drive an automobile.

Many States have already enacted Zero Tolerance laws. These laws work—alcohol-related crashes involving teenage drivers are down as much as 20 percent in those States. When all States have these laws, hundreds more lives will be saved and thousands of injuries will be prevented. I commend the Congress for heeding my call and making Zero Tolerance the standard nationwide for drivers under the age of 21.

I am also proud that citizens across the Nation are working to spread the word about the dangers of impaired driving. Vital partnerships have formed among Federal, State, and local government agencies, private businesses, and community groups. Last year, on December 15, many Americans observed ''Lights on for Life Day'' by driving with their headlights illuminated in remembrance of the victims of drunk and drugged driving. I hope that caring citizens will commemorate the same day this month, doing their part to help ensure a safe holiday season.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1995, as National Drunk and Drugged Driving Prevention Month. I urge all Americans to recognize the dangers of impaired driving; to take responsibility for themselves, their guests, and their passengers; to stop anyone under the influence of drugs or alcohol from getting behind the wheel; and to help teach children safe driving behavior.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.



[FR Doc. 95–29623
Filed 11–30–95; 4:40 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6854 of November 30, 1995

World AIDS Day, 1995

By the President of the United States of America

A Proclamation

Today the world pauses to remember the millions of men, women, and children who are living with HIV and AIDS and to honor the memory of those who have lost their lives to this insidious disease. We renew our commitment to searching for a cure to AIDS and a vaccine for HIV, rededicate ourselves to reducing the number of people who become infected with the virus, and devote our efforts to protecting the dignity and rights of all those affected by the AIDS epidemic.

The statistics are overwhelming. Around the world, more than 18 million people are believed to be infected with HIV. In America alone, over half a million people have been struck by AIDS, and more than 300,000 have already lost their lives. Nearly 80,000 of our fellow citizens are diagnosed with AIDS and more than 40,000 are dying of the disease each year—some 120 every day. In addition, there are an estimated 40,000 to 60,000 Americans who contract HIV annually. The impact of these numbers goes far beyond the individuals involved—each AIDS death devastates a family, weakens a community, and changes society as a whole. HIV and AIDS present extraordinary challenges to every nation and every person on our planet.

In the past year, there has been some encouraging progress. Researchers from many countries have combined their knowledge and skills to better understand the virus that causes AIDS and its effects on the human body; new AIDS drugs are being developed and approved faster than ever before; we are beginning to find ways to rebuild immune systems destroyed by HIV so that those infected can live longer, healthier lives; and we are aggressively confronting this crisis with prevention programs at the grassroots and national levels.

But there is still much work to do. Half of all new infections occur among people under the age of 25, and one-fourth occur among teenagers. We must protect the next generation by continuing to improve the availability of health care services for those with HIV and AIDS. Since 1990, the Ryan White CARE Act has offered help and hope to hundreds of thousands of people, and we are working with the Congress to extend this vital program for an additional 5 years. However, while the CARE Act is an essential element of the safety net that protects people with HIV and AIDS, it cannot do the job alone. We must also maintain our 30-year commitment to the Medicaid program, which provides services to nearly half of all Americans living with AIDS and more than 90 percent of children with AIDS. Without the protection that Medicaid affords, these individuals and their families would lose all access to health care.

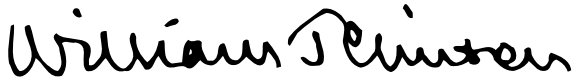
Let us also continue to ensure that our Nation responds aggressively and humanely to the needs of people living with HIV and AIDS. Throughout this epidemic, community organizations have taken the lead in the struggle against the disease and in efforts to provide compassionate care to those in need. Across this country and around the globe, generous people perform miracles every day—holding a hand, cooling a fever, listening, and understanding. Let us further support their efforts to build a better world by

strengthening the partnership between communities and government in the work to stop AIDS.

The theme of this eighth observance of World AIDS Day, ''Shared Rights, Shared Responsibilities,'' is a call to fight against discrimination as strongly as we fight for a cure. When one human being is persecuted because of his or her HIV status, we all suffer. Let us pledge to stand together, united against HIV and AIDS and committed to ending ignorance and prejudice.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1, 1995, as World AIDS Day. I ask the American people to join me in reaffirming our commitment to combatting HIV and AIDS and in reaching out to all those whose lives have been affected by this disease.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.



[FR Doc. 95–29624
Filed 11–30–95; 4:41 pm]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 60, No. 232

Monday, December 4, 1995

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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 30, 1995

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
4	(869–026–00003–4)	5.50	Jan. 1, 1995
5 Parts:			
1–699	(869–026–00004–2)	23.00	Jan. 1, 1995
700–1199	(869–026–00005–1)	20.00	Jan. 1, 1995
1200–End, 6 (6 Reserved)	(869–026–00006–9)	23.00	Jan. 1, 1995
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8	(869–026–00026–3)	23.00	Jan. 1, 1995
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20 Parts:			
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400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
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1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1–1.60	(869–026–00087–5)	21.00	Apr. 1, 1995
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501–1.640	(869–026–00093–0)	21.00	Apr. 1, 1995
§§ 1.641–1.850	(869–026–00094–8)	25.00	Apr. 1, 1995
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–026–00096–4)	27.00	Apr. 1, 1995
§§ 1.1001–1.1400	(869–026–00097–2)	25.00	Apr. 1, 1995
§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–026–00099–9)	25.00	Apr. 1, 1995
30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
40–49	(869–026–00101–4)	14.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
50–299	(869–026–00102–2)	14.00	Apr. 1, 1995
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995
500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990
600–End	(869–026–00105–7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[8] Apr. 1, 1994
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869–026–00110–3)	21.00	July 1, 1995
100–499	(869–026–00111–1)	9.50	July 1, 1995
500–899	(869–026–00112–0)	36.00	July 1, 1995
900–1899	(869–026–00113–8)	17.00	July 1, 1995
*1900–1910 (§§ 1901.1 to 1910.999)	(869–026–00114–6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
1911–1925	(869–026–00116–2)	27.00	July 1, 1995
1926	(869–022–00114–1)	33.00	July 1, 1994
1927–End	(869–022–00115–9)	36.00	July 1, 1994
30 Parts:			
1–199	(869–026–00119–7)	25.00	July 1, 1995
200–699	(869–026–00120–1)	20.00	July 1, 1995
700–End	(869–026–00121–9)	30.00	July 1, 1995
31 Parts:			
0–199	(869–026–00122–7)	15.00	July 1, 1995
200–End	(869–026–00123–5)	25.00	July 1, 1995
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–026–00124–3)	32.00	July 1, 1995
191–399	(869–026–00125–1)	38.00	July 1, 1995
400–629	(869–026–00126–0)	26.00	July 1, 1995
630–699	(869–026–00127–8)	14.00	[5] July 1, 1991
700–799	(869–026–00128–6)	21.00	July 1, 1995
800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
1–124	(869–022–00127–2)	20.00	July 1, 1994
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–026–00132–4)	24.00	July 1, 1995
34 Parts:			
1–299	(869–026–00133–2)	25.00	July 1, 1995
300–399	(869–026–00134–1)	21.00	July 1, 1995
400–End	(869–022–00132–9)	40.00	July 1, 1994
35	(869–026–00136–7)	12.00	July 1, 1995
36 Parts			
1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–026–00138–3)	37.00	July 1, 1995
37	(869–026–00139–1)	20.00	July 1, 1995
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–026–00143–0)	40.00	July 1, 1995
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–026–00147–2)	36.00	July 1, 1995
81–85	(869–022–00145–1)	23.00	July 1, 1994
86–99	(869–022–00146–9)	41.00	July 1, 1994
87–149	(869–026–00150–2)	41.00	July 1, 1995
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–026–00152–9)	17.00	July 1, 1995
260–299	(869–022–00150–7)	36.00	July 1, 1994
*300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–026–00155–3)	26.00	July 1, 1995
*425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–026–00159–6)	9.50	July 1, 1995
101	(869–026–00160–0)	29.00	July 1, 1995
102–200	(869–026–00161–8)	15.00	July 1, 1995
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7] Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
40–69	(869–022–00182–5)	14.00	Oct. 1, 1994
70–79	(869–022–00183–3)	24.00	Oct. 1, 1994
80–End	(869–022–00184–1)	26.00	Oct. 1, 1994
48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–022–00187–6)	16.00	Oct. 1, 1994
2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
3–6	(869–022–00189–2)	23.00	Oct. 1, 1994
7–14	(869–022–00190–6)	30.00	Oct. 1, 1994
15–28	(869–022–00191–4)	32.00	Oct. 1, 1994
29–End	(869–022–00192–2)	17.00	Oct. 1, 1994
49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
200–399	(869–022–00196–5)	30.00	Oct. 1, 1994
400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–022–00198–1)	19.00	Oct. 1, 1994
1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
200–599	(869–022–00201–5)	22.00	Oct. 1, 1994
600–End	(869–022–00202–3)	27.00	Oct. 1, 1994

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–026–00053–1)	36.00	Jan. 1, 1995
Complete 1995 CFR set		883.00	1995
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Complete set (one-time mailing)		244.00	1994
Subscription (mailed as issued)		264.00	1995
Individual copies		1.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.